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APPENDIX

SUPREME COURT OF THE UNITED STATES

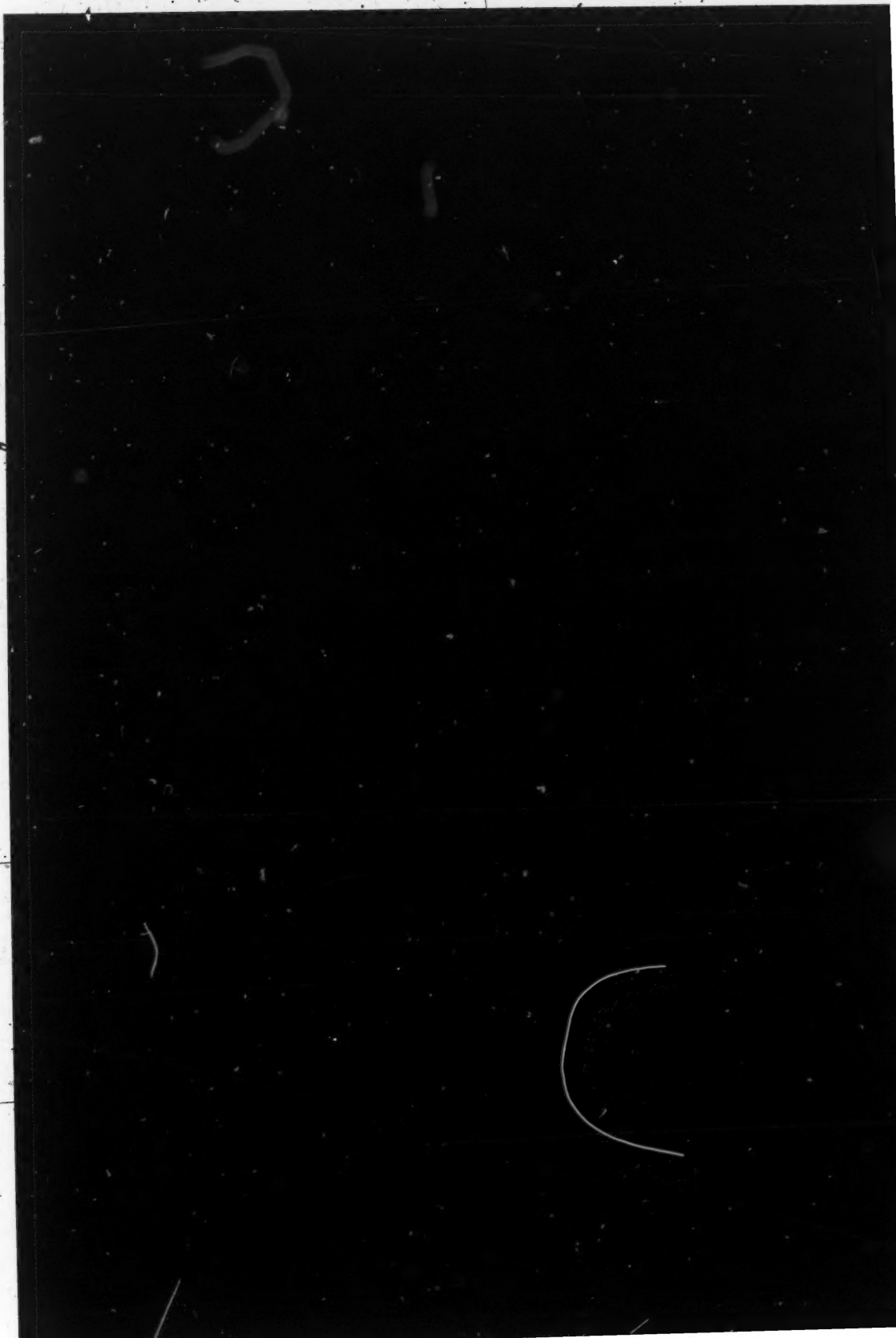
OCTOBER TERM, 1967

No. 701

IN THE MATTER OF
BUDDY LYNN WHITTINGTON, PETITIONER

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF OHIO, FAIRFIELD COUNTY

PETITION FOR CERTIORARI FILED APRIL 11, 1967
CERTIORARI GRANTED OCTOBER 9, 1967



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IN THE JUVENILE COURT OF FAIRFIELD COUNTY, OHIO

Case No. 6183-J

In the Matter of

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

ENTRY

Filed Sep. 20, 12 49, P.M. '66 Issac Rowles Clerk of Courts of Appeals Fairfield County

IN THE JUVENILE COURT OF FAIRFIELD COUNTY, OHIO

Case No. 6183-J

In the Matter of

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

ENTRY

TRANSCRIPT—JUVENILE COURT APPEARANCE Docket (Minors) #9, Page 514

In the Matter of Buddy Lynn Whittington, an alleged delinquent child.

Age—14 years Color—White Resides at Fremont St., Baltimore, Ohio.

School and Teacher—Liberty Union School, Baltimore, Ohio.

Name, residence, nativity and occupation of parents (or of Guardian or Relative)

Orville A. Whittington, father, Fremont St., Baltimore, Ohio.

Ollie Mae Whittington, mother, Fremont St., Baltimore, Ohio.

Date Month	Day	Year	Minute of Filing every paper and brief note of every order or proceeding	Journal No.	Page
Aug.	5	66	Complaint filed alleging that Buddy Lynn Whittington did, on or about the 29th day of July, 1966, in the Village of Baltimore, County of Fairfield, State of Ohio, unlawfully, purposely and maliciously kill one Gladys Williard, filed by Elwood R. Phillips, Baltimore, Ohio		
Aug.	5	66	Journal Entry—of filing complaint	13	1

Date Month	Day	Year	Minute of Filing every paper and brief note of every order or proceeding	Journal No.	Page
Aug.	5	66	Journal Entry—order for warrant to arrest	13	1
Aug.	5	66	Warrant to arrest minor issued to William Rutherford		
Aug.	5	66	Warrant to arrest returned and filed by William Rutherford		
Aug.	5	66	Entry—(showing counsel for defendant)	13	1
Aug.	5	66	Journal Entry—(continuance)	13	1
Aug.	10	66	Motion—(to release defendant during pendency of said cause)		
Aug.	10	66	Motion—(to dismiss because of improper arrest)		
Aug.	10	66	Motion—(to dismiss because the entire Juvenile Court Act is unconstitutional)		
Aug.	11	66	Journal Entry—on arraignment, Plea of "not guilty"	13	2
Aug.	12	66	Motion—(to suppress evidence)		
Aug.	19	66	Precipe filed directing as follows:		
Aug.	19	66	To the Sheriff of Fairfield County, Ohio, for service of subpoena to be made upon Dr. L. L. Kersell, County Health Dept., Lancaster, Ohio		
			To the Sheriff of Fairfield County, Ohio, for service of subpoena to be made upon Elwood Phillips, Chief of Police, Baltimore, Ohio		
			To the Sheriff of Fairfield County, Ohio, for service of subpoena to be made upon William Rutherford, Juvenile Court		

Date Month	Day	Year	Minute of Filing every paper and brief note of every order or proceeding	Journal No.	Page
Aug.	19	66	To the Sheriff of Fairfield County, Ohio, for service of subpoena to be made upon Herman Williard, 220 Fremont St., Baltimore, Ohio		
			To the Sheriff of Fairfield County, Ohio, for service of subpoena to be made upon Aurilla Goodrich, % Stella Brandon, Route 204, Route #1, Baltimore, Ohio		
			To the Sheriff of Fairfield County, Ohio, for service of subpoena to be made upon Ned K. Webb, Eagle-Gazette Office, Lancaster, Ohio		
			To the Sheriff of Franklin County, Ohio, for service of subpoena to be made upcn Dr. Kim, Dept. of Pathology, University Hospital, Columbus, Ohio		
Aug.	23	66	Return of subpoena by Sheriff of Fairfield County, Ohio, showing personal service made upon Dr. L. L. Kersell, County Health Dept., Lancaster, Ohio, by reading of said writ		
			Return of subpoena by Sheriff of Fairfield County, Ohio, showing personal service made upon Elwood Phillips, Chief of Police, Baltimore, Ohio, by reading of said writ		
			Return of subpoena by Sheriff of Fairfield County, Ohio, showing personal service made upon William M. Rutherford, Juvenile Court		

Date Month	Day	Year	Minute of Filing every paper and brief note of every order or proceeding	Journal No.	Page
Aug.	23	66	Return of subpoena by Sheriff of Fairfield County, Ohio, showing personal service made upon Herman Williard, 220 Fremont St., Baltimore, Ohio		
			Return of subpoena by Sheriff of Fairfield County, Ohio, showing personal service made upon Aurilla Goodrich, % Stella Brandon, Route 204, Route #1, Baltimore, Ohio		
			Return of subpoena by Sheriff of Fairfield County, Ohio, showing personal service made upon Ned K. Webb, Eagle-Gazette Office, Lancaster, Ohio		
Aug.	24	66	Motion—(to fix bond for defendant or release defendant pending trial)		
Aug.	25	66	Entry—(on motion to release defendant during pendency of said cause; motion overruled)	13	2
Aug.	25	66	Entry—(on motion to dismiss case because of improper arrest; motion overruled)	13	2
Aug.	25	66	Entry—(on motion to dismiss case because entire Juvenile Court Act is unconstitutional; motion overruled)	13	3
Aug.	25	66	Precipe filed directing as follows:		
Aug.	26	66	To the Sheriff of Fairfield County, Ohio, for service of subpoena to be made upon Dr. L. L. Kersell, County Health Dept., Lancaster, Ohio		

Date Month	Day	Year	Minute of Filing every paper and brief note of every order or proceeding	Journal No.	Page
Aug.	26	66	To the Sheriff of Fairfield County, Ohio, for service of subpoena to be made upon Elwood Phillips, Chief of Police, Baltimore, Ohio		
			To the Sheriff of Fairfield County, Ohio, for service of subpoena to be made upon William Rutherford, Juvenile Court		
			To the Sheriff of Fairfield County, Ohio, for service of subpoena to be made upon Herman Williard, 220 Fremont St., Baltimore, Ohio		
			To the Sheriff of Fairfield County, Ohio, for service of subpoena to be made upon Aurilla Goodrich, % Stella Brandon, Route 204, Route #1, Baltimore, Ohio		
			To the Sheriff of Fairfield County, Ohio, for service of subpoena to be made upon Ned K. Webb, Eagle-Gazette Office, Lancaster, Ohio		
			To the Sheriff of Franklin County, Ohio, for service of subpoena to be made upon Dr. F. E. Cuppage, University Hospital, Columbus, Ohio		
Aug.	26	66	Return of subpoena by Sheriff of Franklin County, Ohio, showing service made upon Dr. Kim, Dept. of Pathology, University Hospital, Columbus, Ohio, by leaving a copy of said writ at his usual place of business		

Date Month	Day	Year	Minute of Filing every paper and brief note of every order or proceeding	Journal No.	Page
Aug.	26	66	Request—(for typed record of testimony and proceedings of hearing held Thursday, August 25th, 1966)		
Aug.	30	66	Request—(for an official court reporter to take record of all evidence and proceedings in hearing on Friday, September 2nd, 1966, at 9:00 a.m.)		
Aug.	31	66	Return of subpoena by Sheriff of Fairfield County, Ohio, showing personal service made upon Dr. L. L. Kersell, County Health Dept., Lancaster, Ohio		
			Return of subpoena by Sheriff of Fairfield County, Ohio, showing personal service made upon Elwood Phillips, Chief of Police, Baltimore, Ohio		
			Return of subpoena by Sheriff of Fairfield County, Ohio, showing personal service made upon William Rutherford, Juvenile Court, by reading of said writ		
			Return of subpoena by Sheriff of Fairfield County, Ohio, showing personal service made upon Herman Williard, 220 Fremont St., Baltimore, Ohio, by reading of said writ		
			Return of subpoena by Sheriff of Fairfield County, Ohio, showing personal service made upon Aurilla Goodrich, % Stella Brandon, Route 204, Route #1, Baltimore, Ohio, by reading of said writ		

Date Month	Day	Year	Minute of Filing every paper and brief note of every order or proceeding	Journal No.	Page
Aug.	31	66	Return of subpoena by Sheriff of Fairfield County, Ohio, showing personal service made upon Ned K. Webb, Eagle-Gazette Office, Lancaster, Ohio		
Sept.	1	66	Entry—(on motion to fix bond for defendant or release defendant pending trial; motion denied)	13	3
Sept.	1	66	Return of subpoena by Sheriff of Franklin County, Ohio, showing service made upon Dr. F. E. Cuppage, University Hospital, Columbus, Ohio, by leaving a copy of said writ at his usual place of residence		
Sept.	1	66	Precipe filed directing as follows:		
			To the Sheriff of Fairfield County, Ohio, for service of subpoena to be made upon Lula Williard, 226 Fremont St., Baltimore, Ohio		
			To the Sheriff of Fairfield County, Ohio, for service of subpoena to be made upon Jack Williard, 220 Fremont Street, Baltimore, Ohio		
			To the Probation Officer of Fairfield County, Ohio, for service of subpoena to be made upon Orville Whittington, Baltimore, Ohio		
			To the Probation Officer of Fairfield County, Ohio, for service of subpoena to be made upon Ollie Whittington, Baltimore, Ohio		

Date Month	Day	Year	Minute of Filing every paper and brief note of every order or proceeding	Journal No.	Page
Sept.	1	66	Entry—(continuance, trial set for September 2nd, 1966, at 9:00 a.m.)	13	3
Sept.	2	66	Return of subpoena by Sheriff of Fairfield County, Ohio, showing personal service made upon Lulu Williard, 226 Fremont St., Baltimore, Ohio		
			Return of subpoena by Sheriff of Fairfield County, Ohio, showing personal service made upon Jack Williard, 220 Fremont St., Baltimore, Ohio, by reading of said writ		
Sept.	2	66	Return of subpoena by Probation Officer of Fairfield County, Ohio, showing personal service made upon Orville Whittington, Baltimore, Ohio		
			Return of subpoena by Probation Officer of Fairfield County, Ohio, showing personal service made upon Ollie Whittington, Baltimore, Ohio		
Sept.	2	66	Motion—(to dismiss proceedings against defendant because of the unconstitutionality of the Juvenile Code Provisions of Ohio)		
Sept.	2	66	Motion—(to employ an official Court reporter)		
Sept.	2	66	Motion—(to dismiss case for reason that the defendant has been confined for 27 days, that he was refused bond, was deprived his constitutional rights and has not been granted a speedy trial)		

Date Month	Day	Year	Minute of Filing every paper and brief note of every order or proceeding	Journal No.	Page
Sept.	7	66	Entry—(on motion to suppress evidence; motion denied)	13	4
Sept.	7	66	Entry—(on motion to dismiss proceedings against defendant because of the unconstitutionality of the Juvenile Code Provisions of Ohio; motion denied)	13	4
Sept.	7	66	Entry—(on motion to employ an official court reporter; motion denied)	13	4
Sept.	7	66	Entry—(on motion to dismiss case for reason that the defendant had been confined for 27 days, that he was refused bond, was deprived of his constitutional rights and has not been granted a speedy trial; motion overruled and denied)	13	4
Sept.	7	66	Application—(for Court's permission to allow defendant to attend his grandfather's funeral, September 7th, 1966)		
Sept.	7	66	Entry—(application approved and defendant released in the custody of his parents to attend the funeral of his grandfather)	13	4
Sept.	7	66	Entry—(adjudged defendant to be a delinquent child and committed temporarily to the Juvenile Diagnostic Center of the Ohio Youth Commission for a report of mental and physical examination)	13	4
Sept.	12	66	Warrant to convey ordered and issued to William M. Rutherford		

Date			Minute of Filing every paper and brief note of every order or proceeding	Journal	
Month	Day	Year		No.	Page
Sept.	12	66	Warrant to convey returned and filed by William M. Rutherford		
Sept.	12	66	Notice of appeal filed		
Sept.	12	66	Request for preparation of Bill of Exceptions filed		
Sept.	12	66	Precipe for transcript filed		
Sept.	20	66	Filed in the Court of Appeals		

COMPLAINT

As to Delinquent, Neglected, Dependent or Crippled Child

Rev. Code, Sec. 2151.27

JUVENILE COURT, FAIRFIELD COUNTY, OHIO

Case No. 6183-J

In the Matter of

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

ENTRY

The undersigned says that he has knowledge of Buddy Lynn Whittington, a minor under the age of [2] 18 years, to-wit, the age of 14 years; that said minor appears to be a [1] delinquent child in this: that he did, on or about the 29th day of July, 1966, in the Village of Baltimore, County of Fairfield, State of Ohio, unlawfully, purposely and maliciously kill one Gladys Willard, contrary to Section 2901.05 of the Revised Code of Ohio.

Said minor is not an inmate of a state institution or an institution incorporated under the laws of the State for the care and correction of delinquent, neglected and dependent children.

The name of the person having custody or control of said minor, or with whom said child now is, is Orville A. Whittington and Ollie Mae Whittington, father and mother of said child, and resides at Fremont St., Baltimore, Fairfield County, Ohio.

That —— the [3] —— of said child resides at [4] ——.

Elwood R. Phillips.

---

[1] Delinquent, Neglected, Dependent, Crippled, Physically handicapped.

[2] Insert "Eighteen," if delinquent, neglected or dependent; insert "Twenty-one," if crippled or otherwise physically handicapped.

[3] "Parent," "Guardian" or "Custodian."

[4] Here give place of residence, also nationality and occupation of parents or nearest relatives, living or dead.

The State of Ohio, Fairfield County, ss.

The undersigned being duly sworn says that the statements in the foregoing complaint are true as he verily believes.

Elwood R. Phillips.

Sworn to before me and signed in my presence this 5th day of August, 1966.

Robert U. Hastings, Judge of the Juvenile Court.
by Lois Fricker, Deputy Clerk.

Filed Aug. 5, 1966. Robert U. Hastings, Juvenile Judge.

No. 6183-J

Juv. App. Doc. No. 9 Page 514

Juvenile Court, Fairfield County, Ohio.

In the Matter of

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

COMPLAINT

Filed in — 19—.

——, ——, Judge of the Juvenile Court. By ——, ——, Deputy Clerk.

Filed Aug. 5, 1966. Robert U. Hastings, Juvenile Judge.

IN THE JUVENILE COURT OF FAIRFIELD COUNTY, OHIO

Case No. 6183-J

August 5th, 1966.

In the Matter of

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

JOURNAL ENTRY—OF FILING COMPLAINT

This day came Elwood R. Phillips, Chief of Police, Baltimore, Ohio, and filed herein a complaint alleging Buddy Lynn Whittington to be a delinquent child and that said child is now in the custody of his parents, Orville A. Whittington, and Ollie Mae Whittington, who reside at Fremont Street, Baltimore, Ohio.

Robert U. Hastings, Judge of the Juvenile Court.

Approved:

E. Raymond Morehart, Prosecuting Attorney.

Juv. Jour. #13, Page 1

Juv. Doc. #9, Page 514

Filed Aug. 5, 1966. Robert U. Hastings, Juvenile Judge.

JOURNAL ENTRY—Order for Warrant to Arrest

On Affidavit Filed Charging Offense Against Minor

Gen'l Code, Sec. 1683-1

IN THE JUVENILE COURT OF FAIRFIELD COUNTY, OHIO

August 5, 1966.

In the Matter of

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

CHARGE OF OFFENSE AGAINST MINOR

This day, Elwood R. Phillips filed with the Clerk of this Court an affidavit setting forth the charge against the accused person, said defendant Buddy Lynn Whittington, it is therefore ordered that a warrant issue to William Rutherford, Probation Officer of this County, for the arrest of said Defendant, who when arrested, shall be taken forthwith before the Judge of this Court, and this cause is continued.

Robert U. Hastings, Judge.

Filed Aug 5, 1966, Robert U. Hastings, Juvenile Judge.

The State of Ohio, —— County, ss.

I, ——, Judge of the Juvenile Court, within and for said County, and in whose custody the Files, Journals and Records of said Court are required by the Laws of the State of Ohio to be kept, do hereby certify that the foregoing is taken and copied from the Journal of the proceedings of said Court; that the same has been compared by me with the original entry on said Journal, and that it is a true and correct copy thereof.

Witness my signature and the seal of said Court, this — day of —— 19 —.

——, ——, Judge of Juvenile Court.

Filed Aug. 5, 1966. Robert U. Hastings, Juvenile Judge.

No. 6183-J

Juv. App. Doc. No. 9 Page 514

Juvenile Court, Fairfield County, O.

THE STATE OF OHIO

v.

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

CHARGE OF OFFENSE AGAINST MINOR

JOURNAL ENTRY

Order for Warrant to Arrest

Dated ——, 19 —

Juv. Jour. Vol. 13 Page 1

Warrant to Arrest Minor

(On Complaint)

Gen'l Code, Sec. 1639-26, 3038, 13432-9,-19

The State of Ohio, Fairfield County, ss.

To William Rutherford, Probation Officer of said County, Greeting:

Whereas, there has been filed in this Court a complaint, duly sworn to, of which the following is a copy:

In the Juvenile Court of Fairfield County, Ohio

Case No. 6183-J

In the Matter of

Buddy Lynn Whittington, an Alleged Delinquent Child

The undersigned says that he has knowledge of Buddy Lynn Whittington, a minor under the age of 18 years, to-wit, the age of 14 years; that said minor appears to be a delinquent child in this: that he did, on or about the 29th day of July, 1966, in the Village of Baltimore, County of Fairfield, State of Ohio, unlawfully, purposely and maliciously kill one Gladys Willard, contrary to Section 2901.05 of the Revised Code of Ohio.

Said minor is not an inmate of a state institution, or any institution incorporated under the laws of the State for the care and correction of delinquent, neglected and dependent children.

The name of the person having custody or control of said minor, or with whom it now is, is Orville A. Whittington and Ollie Mae Whittington, father and mother of said child and resides at Fremont Street, Baltimore, Fairfield County, Ohio.

That —— the —— of said child resides at ——.

s/Elwood R. Phillips.

The State of Ohio, Fairfield County, ss.

The undersigned being duly sworn says that the statements in the foregoing complaint are true as he verily believes.

s/Elwood R. Phillips.

Sworn to before me and signed in my presence this 5th day of August 1966

s/Robert U. Hastings, Judge of the Juvenile Court.
by s/Lois Fricker, Deputy Clerk.

These are therefore to command you to take the said Buddy Lynn Whittington if he be found in your County, or, if he has fled, that you pursue after him into any other County in the State, and take and safely keep the said Buddy Lynn Whittington so that you have his body forthwith before the Judge of said Juvenile Court to answer the said complaint and be further dealt with according to law.

Given under my hand and the seal of said Court, at Lancaster, Ohio, this 5th day of August, 1966.

Robert U. Hastings, Judge of the Juvenile Court.
By Lois Fricker, Deputy Clerk.

RETURN

Office, Fairfield County, Ohio

Received this Writ Aug. 5, 1966, at 8:00 o'clock A.M., and pursuant to its command, on the 5th day of Aug., 1966, I executed the same by arresting the said Buddy Lynn Whittington and now have him before the Judge of the Juvenile Court.

Wm. Rutherford, Probation Officer.

Filed Aug. 5, 1966. Robert U. Hastings, Juvenile Judge.

No. 6183-J

Juv. App. Doc. No. 9 Page 514

Juvenile Court, Fairfield County, Ohio

In the Matter of

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

WARRANT TO ARREST MINOR

(On Complaint)

Issued ——, 19 —.

Returned and Filed, ——, 19 —.

——, ——, Judge of the Juvenile Court. By ——, ——, Deputy Clerk.

IN THE JUVENILE COURT OF FAIRFIELD COUNTY, OHIO

Case No. 6183-J

August 5th, 1966.

In the Matter of

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

ENTRY

In the above titled case, let the record show that the said child, Buddy Lynn Whittington, is represented by Attorney Jack Supman and Attorney Judson Kistler.

Robert U. Hastings, Judge of the Juvenile Court.

Juvenile Journal # 13, page 1

Juvenile Docket #9, page 514

Approved:

Jack Supman, Judson C. Kistler.

Filed Aug. 5, 1966. Robert U. Hastings, Juvenile Judge.

IN THE JUVENILE COURT OF FAIRFIELD COUNTY, OHIO

Case No. 6783-J

August 5, 1966.

In the Matter of

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

JOURNAL ENTRY

On this 5th day of August, 1966, appeared Buddy Lynn Whittington, with his mother and father, Orville A. Whittington and Ollie Mae Whittington, and with his counsel, Jack Supman and Judson C. Kistler.

The Complaint alleging that Buddy Lynn Whittington was a delinquent child was read in open Court and counsel for Buddy Lynn Whittington, an alleged delinquent child, moved the Court to grant them additional time for him to answer said Complaint, which motion was sustained by the Court and granted.

By agreement of counsel, the arraignment of said Buddy Lynn Whittington to answer the Complaint heretofore filed against him is continued until 9:30 a.m. August 11th, 1966.

Robert U. Hastings, Judge of the Juvenile Court.

Approved by:

E. Raymond Morehart, Prosecuting Attorney for Fairfield County. Jack Supman, Judson C. Kistler, Counsel for Buddy Lynn Whittington.

Juv. Jour. #13, Page 1

Juv. Doc. #9, Page 514

Filed Aug. 5, 1966. Robert U. Hastings, Juvenile Judge.

IN THE JUVENILE COURT OF FAIRFIELD COUNTY, OHIO

No. 6183-J

In the Matter of

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

MOTION

Now comes the defendant, a minor 14 years of age, by his attorneys, and moves the Court that he be placed in the custody of his parents who are fine law abiding religious individuals pending any further hearing in this said cause, and released from the County Jail where he is now confined for the reason that the defendant is of tender years, he only having reached the age of 14 on the 23rd. day of July, 1966 and for the further reason that there is no detention home in Fairfield County for the confinement of a minor of tender years.

The defendant is at the present time being confined in a small solitary cell without a light where he is secluded from anyone else by reason of nature of the lack of facilities for the confinement of a minor so that the result is, he is confined in conditions worse than what the most hardened mature criminal would be confined in. It is inconceivable and inhumane that this young boy who has never been involved in any trouble be confined in such conditions pending the hearing of this cause. The Juvenile Court and the Grand Juries of Fairfield County for years have all recommended and found necessary the need of a detention home for the confinement of minors and the entire juvenile act is written having in mind what is best for a juvenile and to continue such confinement of this child in these conditions is unconscionable, is a deprivation of rights of any individual or citizen and it is unthinkable for him to be further so confined. Even the most hardened criminal who would be apprehended in this County and no matter what he would be charged with, would not be so confined as this young lad is now being confined.

This Court upon confinement of this minor with his parent's can impose any restrictions and conditions of the

confinement with his parent's as the Court shall see fit and deem proper.

That the physical facilities and the conditions of this confinement as described in this Motion is no reflection on any official but merely on the archaic and middle age facilities.

If for any reason the Court will not release the Defendant to the custody of his parent's then the defendant prays that he be released to the custody of any other proper custodian during the pendency of these proceedings. If for any reason the Court will not release the child to the custody of his parent's or to any other proper or fit custodian while this action is pending then the defendant prays that the court immediately fix a reasonable appearance bond for the defendant.

Jack Supman, Judson C. Kistler, Attorneys for Defendant, Buddy Lynn Whittington, a minor 14 years of age.

Juv. Doc. #9, page 514

Filed Aug. 10, 1966. Robert U. Hastings, Juvenile Judge. 3:30 p.m.

IN THE JUVENILE COURT OF FAIRFIELD COUNTY, OHIO

No. 6183-J

In the Matter of

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

MOTION

Now comes the defendant, a minor 14 years of age, by his counsel and moves the Court that the complaint filed against him be dismissed for the reason that he was improperly arrested in that a complaint was filed against him and a warrant to arrest issued thereon and then later another complaint was filed which was different from the original complaint.

Jack Supman, Judson C. Kistler, Attorneys for Defendant, Buddy Lynn Whittington, a minor 14 years of age.

Juv. Doc. #9, Page 514

Copy mailed to E. Raymond Morehart, Prosecuting Attorney for Fairfield County.

Filed Aug. 10, 1966. Robert U. Hastings, Juvenile Judge. 3:30 p.m.

IN THE JUVENILE COURT OF FAIRFIELD COUNTY, OHIO

No. 6183-J

In the Matter of

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

MOTION

Now comes the defendant, a minor 14 years of age, by his counsel and moves the Court that the complaint filed against him be dismissed for the reason that the entire juvenile court act is unconstitutional and he is charged with a crime and his constitutional rights are thusly being abridged and he is being deprived of his constitutional rights.

Jack Supman, Judson C. Kistler, Attorneys for Defendant, Buddy Lynn Whittington, a minor 14 years of age.

Juv. Doc. #9, Page 514

Copy mailed to E. Raymond Morehart, Prosecuting Attorney for Fairfield County.

Filed Aug. 10, 1966. Robert U. Hastings, Juvenile Judge. 3:30 p.m.

IN THE JUVENILE COURT OF FAIRFIELD COUNTY, OHIO

Case No. 6183-J

In the Matter of

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

JOURNAL ENTRY—ON ARRAIGNMENT PLEA OF "NOT GUILTY"

August 11th, 1966.

This 11th day of August, 1966, came E. Raymond Morehart, Prosecuting Attorney, also came Buddy Lynn Whittington along with his counsel, Jack Supman and Judson C. Kistler, to be arraigned upon a charge of delinquency. Also present were the parents of said child, Orville A. and Ollie Mae Whittington. The charge was distinctly read to Buddy Lynn Whittington and he was required to plead thereto.

Whereupon the said Buddy Lynn Whittington, through his counsel, entered a plea of "not guilty" to said charge.

It is therefore ordered by the Court that said case be set for hearing on the 24th day of August, 1966, at 9:30 o'clock a.m.

Robert U. Hastings, Judge of the Juvenile Court.

Approved:

E. Raymond Morehart, Prosecuting Attorney.

Juv. Jour. #13, Page 2.

Juv. Doc. #9, Page 514.

Filed Aug. 11, 1966. Robert U. Hastings, Juvenile Judge.

IN THE JUVENILE COURT OF FAIRFIELD COUNTY, OHIO

No. 6183-J

In the Matter of

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

MOTION

Now comes the defendant, a minor 14 years of age, by his counsel and moves the Court to suppress any evidence of statements purportedly made by the defendant for the reason that the defendant only became 14 years of age on the 23rd. day of July, 1966 and that he was not represented by counsel when interrogated by law enforcement officers and representatives, his rights were not explained to him and he was not old enough to be able to appreciate and understand the interrogation and the accusations being made against him, so that defendant respectfully requests the Court to suppress any such evidence in any proceedings before this said Court.

Jack Supman, Judson C. Kistler, Attorneys for Defendant, Buddy Lynn Whittington, a minor 14 years of age.

Juv. Doc. #9, Page 514.

Copy mailed to E. Raymond Morehart, Prosecuting Attorney for Fairfield County.

Filed Aug. 12, 1966. Robert U. Hastings, Juvenile Judge. 1:45 p.m.

IN THE JUVENILE COURT OF FAIRFIELD COUNTY, OHIO

No. 6183-J

In the Matter of

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

MOTION

Now comes the defendant, Buddy Lynn Whittington, a minor 14 years of age he having become fourteen years of age on the 23rd. day of July, 1966 and again moves the Court as follows:.

1. That the defendant be admitted to bond in a reasonable amount as fixed by the Court or that defendant be immediately released to the custody of his parents pending trial as provided in Revised Code Section 2151.31 or that he be sent to the Franklin County Detention Home while awaiting trial in this cause for the following reasons:.

First, This cause was originally set for trial on Thursday, August 11th., 1966 at which time the Prosecutor requested a continuance. The case was then set for trial on August 24th., 1966 at 9:30 o'clock A. M. and yesterday, August 23rd., 1966 at 4:45 o'clock P. M., after the Court House was closed the Secretary to the Prosecutor called the Secretary of one of the defendant's attorneys and said that the trial was continued to August 31st., 1966 and at that time the Secretary to one of the defendant's counsel stated that there was already a trial set in the Common Pleas Court of Fairfield County, Ohio, styled Smith vs. Smith and said trial had been set for some time.

Second, As was stated when the defendant was first confined, he is a minor of tender years and is being confined in solitary confinement in a cell without a light where he is secluded from anyone else and it constitutes such a solitary confinement that even the most hardened adult criminal is not subjected to.

Third, The defendant in this case has never been involved in any trouble in any way, enjoys a good reputation in the community, has been a law abiding young boy in the community and if the Court desires, defendant will bring into Court as many as twenty-five witnesses consisting of a

minister, school teacher and reputable citizens of the community as to this boy's character and good behavior.

Fourth, The parents of the defendant are fine religious, law abiding, christian folks and it will be noted in the record that the Prosecutor at one time stated that they were fine people and the Father of the defendant is retired and no one else lives in the Whittington home except the Father and the Mother of defendant and if the defendant is released to their custody they will devote twenty-four hours a day to being with their son as the Father is retired so that there is no reason in the world to keep this boy confined in any way pending this trial.

Fifth, That if the Court desires and as has been offered before, the defendant will produce Ross M. Bleak, M. D., 3545 Olentangy River Road, Columbus, Ohio, whose professional qualifications are as follows:

Bachelor of Science, University of Utah, 1944
Doctor of Medicine, University of Utah, 1947
Internship, Grasslands Hospital, Valhalla, N. Y., 1947-48
Psychiatric Residency, Kings County Hospital, Brooklyn, N. Y., 1948-50
Fellow in Child Psychiatry, Philadelphia Child Guidance Clinic, Philadelphia, Pa., 1950-51
Post-Graduate Education—Graduate School of Psychiatry, State University of New York, College of Medicine, 1948-50
Staff Psychiatrist, Federal Reformatory for Boys, Chillicothe, O., 1951-53
Consulting Psychiatrist, Children's Mental Health Center, Columbus, O. 1953-57
Consulting Psychiatrist, Juvenile Diagnostic Center, Columbus, O., 1952-1963
Instructor in Psychiatry, Ohio State University, College of Medicine, 1953-1955
Private Practice of Psychiatry, Columbus, Ohio, 1953 to present.
Diplomat of the American Board of Psychiatry and Neurology, 1954
Fellow of the American Psychiatric Association, 1964.

who has examined the boy and will testify that his health and well-being demands that he be released immediately

from solitary confinement and that there is no risk or any danger of any kind in this boy being released to the custody of his parents.

Sixth, That the Court can if it so wishes impose any kind of restrictions as the Court should see fit or proper upon the parents if the child is released to them.

Seventh, That the physical and mental health of this boy is being endangered by continuously keeping him in solitary confinement in a small, iron-barred cell while at the same time in a Shepard case in Cleveland an adult who was once convicted of murdering his wife which judgment has now been vacated and in which case another trial is pending to-wit: the Shephard case, is allowed to be out on bond by virtue of a ruling of the Federal Courts of the United States.

Eighth, That the defendant in this case does now and always has denied any knowledge of the death of Gladys Willard and did deny any knowledge of same when he was questioned by police officers and others for several hours without having been advised as to his rights as guaranteed by the case of Miranda v. State of Arizona, June 13, 1966, 86 S. Ct. 1602 and the case of Johnson v. State of New Jersey, June 20, 1966, 86 S. Ct. 1772.

Ninth, That the continuances in this cause were not due to any fault of the defendant as he was ready when the matter was originally set on August 11th., 1966 and to subject him to such inhumane solitary confinement such as has never been heard of before for a minor of this age is unthinkable and inhumane and such confinement as not even a stray dog receives in the County of Fairfield, State of Ohio. As in the new dog shelter home a dog is allowed to be out in the air and in the light and not just confined indoors behind iron bars in a small area and no reflection is being made in any way upon the personnel of the local sheriff's office who are without proper physical facilities for the confinement of a minor.

Finally, defendant, Buddy Lynn Whittington, is requesting an immediate hearing on this Motion and also the opportunity to bring in witnesses to establish the foregoing.

Jack Supman, Judson C. Kistler, Attorneys for Defendant, Buddy Lynn Whittington, a minor 14 years of age.

MEMORANDUM

R. C. 2151.31 Custody of child pending hearing; child may be fingerprinted, provides in part as follows:

> "Whenever any officer takes a child into custody, he shall, unless it is impracticable or has been otherwise ordered by the juvenile court, *accept the written promise of the parent, guardian, or custodian to bring the child to the court at the time fixed.* Thereupon such child may be released in the custody of a parent, guardian, or custodian. . . ."

R. C. 2151.26 Child charged with felony, provides in part as follows:

> "In any case involving a delinquent child under sections 2151.01 to 2151.45, inclusive, of the Revised Code, who has committed an act which could be a felony if committed by an adult, the juvenile judge, after full investigation and after a mental and physical examination of such child has been made by the bureau of juvenile research, or by some other public or private agency, or by a person qualified to make such examination, may order *that such child enter into a recognizance with good and sufficient surety, subject to the approval of the judge,* for his appearance before the court of common pleas at the next term thereof. . . ."

R. C. 2151.34 Place of detention for children, provides in part as follows:

> "No child under eighteen years of age shall be placed *in or committed to any prison, jail, or lockup, nor shall such child be brought* into any police station, vehicle, . . ."

The United States Supreme Court has ruled that the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates use of procedural safeguards effective to secure the privilege against self-incrimination. The Court went on to hold that unless other effective means would be devised, prior to any questioning a person must be warned that he may remain silent, that

any statement he makes may be used as evidence, and that he has a right to the presence of an attorney, either retained or appointed. Miranda v. State of Arizona, June 13, 1966, 86 S. Ct. 1602.

Escobedo v. State of Illinois.

Juv. Doc. #9, Page 514

Copy mailed to E. Raymond Morehart, Prosecuting Attorney for Fairfield County.

Filed Aug. 24, 1966. Robert U. Hastings, Juvenile Judge. 1 o'clock P. M.

IN THE JUVENILE COURT OF FAIRFIELD COUNTY, OHIO

Case No. 6183-J

In the Matter of

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

ENTRY

This cause came on for hearing this 11th day of August, 1966, on motion of defendant that the Court order his release to the custody of his parents and, if not released to his parents then the defendant to be released to the custody of any other proper custodian during the pendency of this cause and, if not released to the parents or some other custodian, that the Court immediately fix a reasonable appearance bond for the defendant.

The Court, after hearing argument of counsel for the defendant, the Prosecuting Attorney and, upon due consideration of all that had been presented, finds said motion should be, and the same hereby is, overruled. Exceptions saved to the defendant.

Robert U. Hastings, Judge.

Approved:

E. Raymond Morehart, Prosecuting Attorney. Jack Supman, Judson C. Kistler, Counsel for Buddy Lynn Whittington.

Juv. Jour. #13, Page 2

Juv. Doc. #9, Page 514

Filed Aug. 25, 1966. Robert U. Hastings, Juvenile Judge.

IN THE JUVENILE COURT OF FAIRFIELD COUNTY, OHIO

Case No. 6183-J

In the Matter of

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

ENTRY

This cause came on for hearing this 11th day of August, 1966, on the motion of the defendant to dismiss the complaint heretofore filed against him for the reason that he was improperly arrested.

The Court, after hearing argument of counsel for the defendant and the Prosecuting Attorney, finds said motion not to be well taken and that the same should be, and hereby is, overruled. Exceptions saved to the defendant.

Robert U. Hastings, Judge.

Approved:

E. Raymond Morehart, Prosecuting Attorney. Jack Supman, Judson C. Kistler, Counsel for Buddy Lynn Whittington.

Juv. Jour. #13, Page 2

Juv. Doc. #9, Page 514

Filed Aug. 25, 1966. Robert U. Hastings Juvenile Judge.

IN THE JUVENILE COURT OF FAIRFIELD COUNTY, OHIO

Case No. 6183-J

In the Matter of

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

ENTRY

This cause came on for hearing this 11th day of August, 1966, on the motion of the defendant to dismiss the complaint against him for the reason that the entire Juvenile Court act is unconstitutional and that the defendant is being deprived of his constitutional right.

The Court, after hearing argument of counsel for the defendant and the Prosecuting Attorney, finds said motion not to be well taken and that the same should be overruled.

It is therefore ordered that the motion of the defendant to dismiss the complaint for the reason that the entire juvenile court act is unconstitutional, be, and the same hereby is, overruled. Exceptions saved to the defendant.

Robert U. Hastings, Judge.

Approved:

E. Raymond Morehart, Prosecuting Attorney. Jack Supman, Judson C. Kistler, Counsel for Buddy Lynn Whittington.

Juv. Jour. #13, Page 2

Juv. Doc. #9, Page 514

Filed Aug. 25, 1966. Robert U. Hastings, Juvenile Judge.

IN THE JUVENILE COURT OF FAIRFIELD COUNTY, OHIO

Case No. 6183-J

In the Matter of

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

REQUEST

To the Official Court Reporter:

Please type the record of the testimony and proceedings of the hearing in the above mentioned case which hearing was held on Thursday, August 25th., 1966 on the Motion of the Defendant, Buddy Lynn Whittington, requesting the Court to fix bond or release him to his parents pending trial or send him to the Franklin County Detention Home pending trial, for defendant.

Jack Supman, Judson C. Kistler, Attorneys for Defendant, Buddy Lynn Whittington.

Juv. Doc. #9, Page 514

Filed Aug. 26, 1966. Robert U. Hastings, Juvenile Judge. Filed 10:29 A.M.

IN THE JUVENILE COURT OF FAIRFIELD COUNTY, OHIO

Case No. 6183-J

In the Matter of

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

REQUEST

Now comes the defendant and requests that an official court reporter take a record of all evidence and all the proceedings in the hearing in this cause set for Friday, September 2nd., 1966 at nine o'clock A.M.

Jack Supman, Judson C. Kistler, Attorneys for Defendant, Buddy Lynn Whittington, a minor 14 years of age.

Juv. Doc. #9, Page 514

Filed Aug. 30, 1966. Robert U. Hastings, Juvenile Judge. 8:20 A.M.

Copy mailed to E. Raymond Morehart, Prosecuting Attorney for Fairfield County.

IN THE JUVENILE COURT OF FAIRFIELD COUNTY, OHIO

Case No. 6183-J

In the Matter of

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

ENTRY

This cause came on for hearing this 25th day of August, 1966, on the motion of the defendant, Buddy Lynn Whittington, to be admitted to bond in a reasonable amount to be fixed by the Court or that he be released to the custody of his parents pending trial or that he be sent to the Franklin County Detention Home while awaiting trial in this cause, the evidence of witnesses in support thereof and arguments of counsel.

The Court, after hearing the evidence adduced in behalf of said motion and after hearing arguments of counsel, finds said motion not to be well taken and that the same should be denied.

It is therefore the order of this Court that the motion of the defendant as set forth above be, and the same hereby is denied. Exceptions saved to the defendant.

Robert U. Hastings, Judge.

Approved:

E. Raymond Morehart, Prosecuting Attorney. Jack Supman, Judson C. Kistler, Attorneys for Defendant.

Juv. Jour. #13, Page 3

Juv. Doc. #9, Page 514

Filed Sep. 1, 1966. Robert U. Hastings, Juvenile Judge. 9:50 A.M.

IN THE JUVENILE COURT OF FAIRFIELD COUNTY, OHIO

Case No. 6183-J

In the Matter of

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

ENTRY

This cause having been set for hearing at 9:30 A.M., on August 24, 1966, and for good cause shown by the prosecution that essential witnesses were out of the jurisdiction of the Court and could not be present, it is ordered that said cause be continued.

It is further ordered, and with agreement of counsel, that the trial of this cause is set for 9:00 A.M., September 2, 1966.

Robert U. Hastings, Judge.

Approved:

E. Raymond Morehart, Prosecuting Attorney. Jack Supman, Judson C. Kistler, Attorneys for Defendant.

Juv. Jour. #13, Page 3

Juv. Doc. #9, Page 514

Filed Sep. 1, 1966. Robert U. Hastings, Juvenile Judge. 9:50 A.M.

IN THE JUVENILE COURT OF FAIRFIELD COUNTY, OHIO

Case No. 6183-J

In the Matter of

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

MOTION

Now comes the Defendant herein through his counsel and renews the Motion to dismiss the proceedings against him by reason of the fact of the unconstitutionality of the Juvenile Code Provisions of Ohio.

The Juvenile Statutes as presently constituted deprive this Defendant of his constitutional rights to a fair and impartial trial. That the manner in which the statutes are presently constituted and out of necessity have to be administered by this Court, the Court's self appointed investigating officer was called by the Court to investigate this minor Defendant for an offense which may or may not have been committed by this Defendant which this Defendant does deny, but which subsequently did result in a charge. That the statutes as constituted require the investigation officer to submit facts to the Judge of this Court as a basis and grounds for issuing a warrant and a complaint for an arrest of the same Defendant who will be tried by the same Judge. Thusly and in consequence thereto, these statutes do not in any manner permit any Court who has heard facts to be the basis of an arrest, to be able to render a fair and impartial decision. In fact, such as in this case, the officer of the Court not only made the investigation but failed to acquaint the Defendant with his Constitutional Rights, that he was entitled to an attorney, to remain quiet and that any statements he made would or could be used against him.

That now when this very same question will be presented to the same Court on a Motion to suppress the evidence and there will be testimony by the same investigating officer who under the statute must be appointed by the hearing Judge, as to the merits of this Motion. That the same investigating officer who will testify has been permitted to remain in Court to hear all of the Motions

and testimony which Court is under the complete control and supervision of a Judge as provided by the statutes, whereas actually the Judge does have control and did exercise control of his Court and excluded others but did allow the investigating officer to remain in the Court Room when he will be called later as a prosecuting witness.

That under the circumstances as recited and as provided by the Statutes, a Judge under these Statutes is placed in this compromising position. That this Court has now to pursue under the Statutes in this case to hear this cause after having previously heard the claims of the Prosecution and his own investigating officer. It is submitted that in a serious felony charge which according to the Statutes would authorize the Judge to find this boy a delinquent and possibly bind him over to the Grand Jury with the resulting publicity that he has already been found guilty of committing the offense with the resulting noteriety so as to deprive him of a fair and impartial trial according to the standards as layed down by the Federal Court in the recent Sheppard Case.

Wherefore, it is again submitted that the Statutes which put the Defendant and any Court in this situation in light of the Supreme Court and other Court Rulings out of necessity has to be declared unconstitutional as an abridgment of the rights of this Defendant to a fair, speedy and impartial trial.

Jack Supman, Judson C. Kistler, Attorneys for Defendant, Buddy Lynn Whittington.

Juv. Doc. #9, Page 514

Filed Sep. 2, 1966. Robert U. Hastings, Juvenile Judge. 8:20 A.M.

IN THE JUVENILE COURT OF FAIRFIELD COUNTY, OHIO

Case No. 6183-J

In the Matter of

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

MOTION

Now comes the Defendant Buddy Lynn Whittington, a minor 14 years of age and again moves the Court that an official Court Reporter be employed to take the testimony in any further hearings in this said cause, and suggests that Alvin A. Omsberg, the official Court Reporter of the Common Pleas Court or a reporter from the firm of Armstrong and Oakey or some other firm of accredited reporters be employed to take the testimony and the proceedings so that during the course of any further proceedings if a question is asked to be read back that the same can be done and also so that the testimony can be typed and transcribed after the same is taken.

Jack Supman, Judson C. Kistler, Attorneys for Defendant.

Juv. Doc. #9, Page 514

Filed Sep. 2, 1966. Robert U. Hastings, Juvenile Judge. 8:20 A.M.

IN THE JUVENILE COURT OF FAIRFIELD COUNTY, OHIO

Case No. 6183-J

In the Matter of

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

MOTION

Now comes the Defendant Buddy Lynn Whittington, a minor 14 years of age, and moves the Court that this said complaint and this entire proceedings filed against him in this said cause be dismissed for the following reasons:

1. The Defendant has been confined for a period of 27 days, to wit since August 5, 1966, in solitary confinement in an iron cell and cage, all as forbidden by the Constitution of the United States, the Constitution of the State of Ohio, the Federal Decisions and the Revised Code of the State of Ohio and the Civil Rights Act, all of which forbidden cruel and inhuman punishment being inflicted upon any individual, and especially where a minor who has only reached the age of 14 on July 23, 1966, so that the rights of this minor as guaranteed by everything that we stand for and the legal system of jurisprudence of the United States and the State of Ohio, have been taken from this minor Defendant.

2. The Defendant has been refused Bond even after various Motions and Requests have been made by the Defendant for the fixing of the same and even after a hearing was had in the Court, in which a large number of witnesses testified including a minister, a schoolteacher, a Sunday School Superintendent, neighbors of the Defendant and others, all of whom established that there was absolutely no reason for the holding of this boy in solitary confinement in the iron cage that he is now being held in and in which hearing no evidence was offered whatsoever to give any indication that the boy should be so held or that there was any risk in any way in releasing the boy to Bond or to his parents, and it was established that the parents were

fine Christian folks who would spend every moment of their time with the boy if he was released and in which hearing it was indicated by everyone including the Prosecutor that the parents of the minor Defendant were fine Christian people, as is the Defendant, who has never been in any kind of trouble whatsoever.

3. The Defendant has been deprived of his Constitutional Rights in that at the beginning of the hearing he requested a Court Reporter to take all the testimony, meaning a reporter who could read back the questions and then type up the record and such was not granted to him.

4. The Defendant in this case was deprived of rights in that he was examined by an official of this Court and by other law enforcement officers and subjected to gruelling interrogation for a period of several hours without first being advised of his rights which are:

(1) He must be informed "in clear and unequivocal terms that he has the right to remain silent."

(2) The warning of the right to remain silent must be accompanied by an explanation that anything he says can and will be used against him in Court.

(3) He must be warned not only that he has the right to counsel but also that if he is indigent a lawyer will be appointed to represent him.

(4) If he indicates "in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease."

5. At a hearing in this Court on the 24th day of August 1966, testimony was given and then the Defendant requested, by a written request, that the testimony and the record of the proceedings be typed up so that the same would be available for him at a hearing on Friday, September 2, 1966. On Wednesday, August 31, 1966, in the late afternoon, the Defendants Attorney called the official Court Reporter as to when the testimony and proceedings and the record would be ready and

was informed that she had not proceeded to type the same because she had not been instructed to do so by the Court.

6. That this cause be dismissed for the reason that the Defendant has not been granted a speedy trial as contemplated by the Revised Code of the State of Ohio, the Constitution of the United States and the State of Ohio and the Decisions of the Federal Court. The Defendant was arrested and confined on Friday, August 5, 1966; the arrangement was set for 2:00 P.M. at the same time a request was made for a continuance until Monday or Tuesday, August 8th or 9th since the Court House was closed on Saturday, August 6, 1966; the Prosecutor was unable to be present at any hearing until August 11, 1966 at 9:00 A.M. On August 11, 1966, the Defendant and his counsel appeared and were ready for the hearing and the Prosecutor stated to the Court that he was not ready to proceed with the hearing and evidence and again asked for a continuance at which time the Defendant objected to the continuance unless the Defendant would be released on Bond or in the custody of his parents. The Prosecutor then notified the Court that the matter could not be held until August 18, 1966, at which time the Defense Counsel would be out of town and had so notified the Court in writing over two months prior. The matter was then set for August 24, 1966 at 9:00 A.M. The Defendant again renewed his Motion to be released on Bond or to be sent some suitable place other than the solitary cell in which he was being incarcerated and which Motion was again denied. It was then approximately nine days from August 11, 1966, before the Prosecutor filed a Precipe for a necessary witness, a doctor who was the pathologist in this case in an adjoining County after which the Precipe was then sent by Certified Mail. That the said doctor had still not been notified on August 22, 1966, that he was to be in Court on August 24, 1966, and this was the reason given by the Prosecutor why the hearing could not be then held on August 24, 1966. In fact it was between 4:30 and 4:45 on August 23, 1966, that the Defendant or his Counsel was notified that the hearing would not

be held on August 24, 1966. The Defendant again renewed his Motion and presented testimony by a large number of witnesses without contradiction that the Defendant should be put out on Bond or in the custody of his parents. Listening to all this evidence the Court without any evidence being offered to oppose the Motion whatsoever, denied the Motion.

7. That the cruel and inhuman solitary confinement in an iron cage that this Defendant has been subjected to, has already done him irreparable harm and to continue to keep him so cruelly and inhumanly confined can only lead to insanity or some other grievous result from which this 14 year old boy will never recover.

Jack Supman, Judson C. Kistler, Attorneys for Defendant.

Juv. Doc. #9, Page 514

Filed Sep. 2, 1966. Robert U. Hastings, Juvenile Judge. 8:20 A.M.

IN THE JUVENILE COURT OF FAIRFIELD COUNTY, OHIO

Case No. 6183-J

In the Matter of

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

ENTRY

This cause came on for hearing this 2nd day of September, 1966, on the motion of the defendant to suppress any evidence of statements purportedly made by the defendant for the reason that the defendant only became 14 years of age on the 23rd day of July, 1966 and that he was not represented by counsel when interrogated by law enforcement officers and representatives, his rights were not explained to him and he was not old enough to be able to appreciate and understand the interrogation and the accusations being made against him, so that defendant requests the Court to suppress any such evidence in any proceedings before said Court.

The Court, after hearing arguments of counsel, finds said motion should be, and the same hereby is, denied. Exceptions saved to the defendant.

Robert U. Hastings, Judge.

Approved:

E. Raymond Morehart, Prosecuting Attorney. Jack Supman, Judson C. Kistler, Attorneys for defendant, Buddy Lynn Whittington.

Juv. Jour. #13, Page 4

Juv. Doc. #9, Page 514

Filed Sep. 7, 1966. Robert U. Hastings, Juvenile Judge. 2:30 P.M.

IN THE JUVENILE COURT OF FAIRFIELD COUNTY, OHIO

Case No. 6183-J

In the Matter of

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

ENTRY

This cause came on for hearing this 2nd day of September, 1966, on the Motion of the defendant to dismiss the proceedings against the defendant for the reason that the Juvenile Code Provisions of the Revised Code of the State of Ohio are unconstitutional.

The Court, after hearing arguments of counsel, finds that said motion is not well taken and that the same should be, and it hereby is, denied. Exceptions saved to the defendant.

Robert U. Hastings, Judge.

Approved:

E. Raymond Morehart, Prosecuting Attorney. Jack Supman, Judson, Attorneys for defendant, Buddy Lynn Whittington.

Juv. Jour. #13, Page 4

Juv. Doc. #9, Page 514

Filed Sep. 7, 1966. Robert U. Hastings, Juvenile Judge. 2:30 P.M.

IN THE JUVENILE COURT OF FAIRFIELD COUNTY, OHIO

Case No. 6183-J

In the Matter of

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

ENTRY

This cause came on for hearing on this 2nd day of September on the motion of the defendant for the Court to employ an official Court Reporter to take the testimony in any further hearings in this said cause and suggested that Alvin A. Omsberg, the Official Court Reporter of the Common Pleas Court or a reporter from the firm of Armstrong and Oakey or some other firm of accredited reporters to take the testimony and the proceedings. The Court, after hearing comments and arguments of counsel, and after advising counsel that the Court had an official reporter, finds that said motion should be, and the same hereby is, denied. Exceptions saved to the defendant.

Robert U. Hastings, Judge.

Approved:

E. Raymond Morehart, Prosecuting Attorney.

Submitted but not Approved:

Jack Supman, Judson C. Kistler, Attorneys for Defendant, Buddy Lynn Whittington.

Juv. Jour. #13, Page 4

Juv. Doc. #9, Page 514

Filed Sep. 7, 1966. Robert U. Hastings, Juvenile Judge. 2:30 P.M.

IN THE JUVENILE COURT OF FAIRFIELD COUNTY, OHIO

Case No. 6183-J

In the Matter of

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

ENTRY

This cause came on for hearing this 2nd day of September, 1966, on the Motion of the defendant to dismiss the complaint and the entire proceedings against the defendant for the reasons that he had been confined for a period of 27 days, that he was refused bond, that he was deprived of his Constitutional rights, that he has not been granted a speedy trial, et al.

The Court, after hearing arguments and comments of counsel, finds that said motion is not well taken and that the same should be, and hereby is, overruled and denied. Exceptions saved to the defendant.

Robert U. Hastings, Judge.

Approved:

E. Raymond Morehart, Prosecuting Attorney.

Submitted but not Approved:

Jack Supman, Judson C. Kistler, Attorneys for Defendant, Buddy Lynn Whittington.

Juv. Jour. #13, Page 4

Juv. Doc. #9, Page 514

Filed Sep. 7, 1966. Robert U. Hastings, Juvenile Judge. 2:30 P.M.

IN THE JUVENILE COURT OF FAIRFIELD COUNTY, OHIO

Case No. 6183-J

In the Matter of

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

APPLICATION

Now comes the Defendant herein, by his attorneys, and respectfully requests approval of this Court for permission to have the parents of the said child take this Defendant to attend the funeral for the Defendant's grandfather, which funeral will be held September 7, 1966. That the said parents will be responsible for the picking up, and for the return of said minor to the County Jail.

Jack Supman, Judson C. Kistler, Attorneys for said Minor, Defendant herein.

Juv. Doc. #9, Page 514

Filed Sep. 7, 1966. Robert U. Hastings, Juvenile Judge.

ENTRY

Upon Application of the Attorneys for said Minor herein, for approval to have said minor attend the funeral of his grandfather, September 7, 1966, the Court hereby approves said Application, and authorizes said parents to take said minor from the County Jail at 11:00 A.M., September 7, 1966, hold him in their custody, and return him at 7:00 P.M., September 7, 1966.

Robert U. Hastings, Judge of said Court.

Approved:

Jack Supman, Judson C. Kistler, Attorneys for said Minor, Defendant herein.

Juv. Jour. #13, Page 4

Juv. Doc. #9, Page 514

Filed Sep. 7, 1966. Robert U. Hastings, Juvenile Judge.

IN THE JUVENILE COURT OF FAIRFIELD COUNTY, OHIO

Case No. 6183-J

In the Matter of

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

ENTRY

On the 2nd day of September, 1966, appeared E. Raymond Morehart and S. Farrell Jackson, Prosecuting Attorneys on behalf of the State of Ohio; also appeared Buddy Lynn Whittington, an alleged delinquent child, with his parents, O. A. Whittington and Ollie Whittington, father and mother, and his attorneys, Judson C. Kistler and Jack Supman.

The said Buddy Lynn Whittington, a minor child of the age of 14 years, being brought before the Court, this cause came on to be heard on the compaint, and it appearing that all citations and warrants have been served and that all persons interested are now before the Court, and the Court having heard all of the evidence and being fully advised in said premises, finds that said Buddy Lynn Whittington is a minor under the age of eighteen years, fourteen years of age, and is a delinquent child as set forth in the complaint, and that said Buddy Lynn Whittington has committed an act which would be a felony if committed by an adult.

It is therefore ordered by the Court, pursuant to Section 2151.26 of the Revised Code of the State of Ohio, that William Rutherford, the Juvenile Probation Officer, make a full investigation herein and report the same to this Court. It is further ordered that said Buddy Lynn Whittington, a delinquent child, be committed to the Juvenile Diagnostic Center of the Ohio Youth Commission for a complete mental and physical examination, the results of which are to be forwarded to this Court. And this cause is continued pending investigation and the findings of the mental and physical examination. Exceptions saved to the defendant.

Judge Robert U. Hastings, Judge.

Approved:

E. Raymond Morehart, Prosecuting Attorney. S. Farrell Jackson, Assistant Prosecuting Attorney.

Submitted to But Not Approved:

Jack Supman, Judson C. Kistler, Attorneys for Defendant.

Juv. Jour. #13, Page 4

Juv. Doc. #9, Page 514

Filed Sep. 7, 1966. Robert U. Hastings, Juvenile Judge. 2:30 P. M.

Warrant to Convey

Rev. Code, Secs. 2151.35, .36

Juvenile Court

The State of Ohio, Fairfield County, ss.

To: William M. Rutherford, Probation Officer, Fairfield County, Ohio.

Greeting:

Whereas, Buddy Lynn Whittington, having been ordered by the Juvenile Court of said County, to be committed to Ohio Youth Commission, temporary commitment at Columbus, Ohio; you are hereby commanded forthwith to take charge of and convey said Buddy Lynn Whittington to said Ohio Youth Commission.

After executing this warrant you shall make due return thereof to this office.

Witness my signature and seal of said Court, this 12th day of September 1966

Robert U. Hastings, Judge of the Juvenile Court.
By Ruth Ann Jackson, Deputy Clerk.

The Ohio Youth Commission, Columbus, Ohio, September 12th, 1966.

Received this day of William M. Rutherford the person named in the above warrant.

Sherry Lewis—Intake.

Return

Fairfield County, Ohio. September 12th 1966

Received the within Writ on the 12th day of September 1966 and on the 12th day of September 1966 I executed it by conveying the person named to the place designated, and I delivered him into the custody of the Sherry Lewis, Intake of said Ohio Youth Commission as shown by the receipt indorsed within.

Wm. Rutherford.

Filed Sep. 12, 1966. Robert U. Hastings, Juvenile Judge.

No. 6183 J

Juv. App. Doc. 9 Page 514

JUVENILE COURT, FAIRFIELD COUNTY, OHIO

In the Matter of

BUDDY LYNN WHITTINGTON

WARRANT TO CONVEY

Returned and Filed, ——, ——, 19 —.

——, ——, Judge of the Juvenile Court. ——, ——, Deputy Clerk.

IN THE JUVENILE COURT OF FAIRFIELD COUNTY, OHIO

No. 6183-J

In the Matter of

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

NOTICE OF APPEAL

Buddy Lynn Whittington, a minor 14 years of age, defendant-appellart, gives Notice of his Appeal to the Court of Appeals of Fairfield County, Ohio, from the order and final judgment made and entered herein in the above entitled cause on the 7th. day of September, 1966 whereby the Court found the defendant to be a delinquent child as set forth in the complaint. Said Appeal is on questions of law.

Jack Supman, Judson C. Kistler, Attorneys for Defendant-Appellant, Buddy Lynn Whittington, a minor 14 years of age

Copy mailed to E. Raymond Morehart, Prosecuting Attorney for Plaintiff-Appellee, this 12th. day of September, 1966.

Jack Supman, Judson C. Kistler, Attorneys for Defendant-Appellant, Buddy Lynn Whittington, a minor 14 years of age

Juv. Doc. #9, Page 514

Filed Sep. 12, 1966. Robert U. Hastings, Juvenile Judge. 3:10 P. M.

IN THE JUVENILE COURT OF FAIRFIELD COUNTY, OHIO

No. 6183-J

In the Matter of

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

REQUEST FOR PREPARATION OF BILL OF EXCEPTIONS

To the Juvenile Judge, to the Official Court Reporter and to the Assistant Court Reporter:

Please prepare and file a Bill of Exceptions in the above mentioned case for use in the Court of Appeals of Fairfield County, Ohio.

Jack Supman, Judson C. Kistler, Attorneys for Defendant-Appellant, Buddy Lynn Whittington, a minor 14 years of age

Juv. Doc. #9, Page 514. Filed Sep. 12, 1966. Robert U. Hastings, Juvenile Judge.

3:10 P.M.

IN THE JUVENILE COURT OF FAIRFIELD COUNTY, OHIO

No. 6183-J

In the Matter of

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

PRECIPE FOR TRANSCRIPT

To the Clerk of the Juvenile Court:

Please prepare and file with the Court of Appeals of Fairfield County, Ohio, a transcript of the docket and journal entries together with all the original papers in the above entitled cause.

Jack Supman, Judson C. Kistler, Attorneys for Defendant-Appellant, Buddy Lynn Whittington, a minor 14 years of age

Juv. Doc. #9, Page 514

Filed Sep. 12, 1966. Robert U. Hastings, Juvenile Judge. 3:10 P. M.

IN THE JUVENILE COURT OF FAIRFIELD COUNTY, OHIO

No. 6183-J

In the Matter of

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

BILL OF EXCEPTIONS

Date of the Overruling or Decision September 7, 1966

Date of Filing of Notice of Appeal September 12, 1966

Exceptions Filed with Clerk of Trial Court October 19, 1966

Robert U. Hastings, Clerk

By Ruth Ann Jackson, Deputy

Notice of Filing October 20, 1966

(By the Clerk to adverse party or his attorney, FORTHWITH after filing)

I, as adverse party to this bill of exceptions, hereby consent to immediate transmission of the same to the Trial Judge.

Jack Supman, 10/31/66.
Judson C. Kistler, 10/31/66.
E. Raymond Morehart,
10/31/66.
Prosecuting Attorney.

OBJECTIONS OR AMENDMENTS TO THE EXCEPTIONS:

(Must be in TEN DAYS after said notice - R.C. 2321.06)

By ——, ——. 19—

By ——, ——. 19—

By ——, ——. 19—

Transmitted to Trial Judge 19—

(Must be either 1, ON EXPIRATION of time for filing objections or amendments, or within FIVE DAYS thereafter; or 2, IMMEDIATELY on filing of the bill if the consent of the adverse party be endorsed as above indicated.) Signature of trial judge may be dispensed with as provided in R.C. 2321.12.

Received 10/31/66. Robert U. Hastings, Trial Judge.

Allowed 10/31/66. Robert U. Hastings, Trial Judge.

Transmitted back to Clerk 10/31/66. Robert U. Hastings, Trial Judge.

Received again by Clerk 10/31/66.

Filed in Court of Appeals of Fairfield County, Ohio, October 31, 1966.

Isaac Rowles, Clerk.
By Karen M. Smith, Deputy.

[Tr. 1-2] IN THE JUVENILE COURT OF FAIRFIELD COUNTY, OHIO

No. 6183-J

In the Matter of

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

HEARING ON MOTION

Date: August 25, 1966

Before: Hon. ROBERT U. HASTINGS, Judge.

APPEARANCES:

For the State of Ohio: E. Raymond Morehart, Prosecuting Attorney, Fairfield County, Ohio.

For the Defendant: Judson C. Kistler, Attorney at Law, 124½ W. Main Street, Lancaster, Ohio; and Jack Supman, Attorney at Law, 124½ W. Main Street, Lancaster, Ohio.

[Tr. 3] PROCEEDINGS

The Court: We're here this morning on a Motion that was filed August 24th by defense counsel, Mr. Supman and Mr. Kistler. Are you ready to proceed?

Mr. Kistler: If your Honor please, we're here again this day on the Motion of the defendant, Buddy Lynn Whittington, a minor 14 years of age, begging the Court at this time that he be released to his parents or placed on bond or sent to the Franklin County Detention Home while this matter is pending. We have several times since this matter was filed prayed the Court and requested the Court for this relief because of the minority of this child that is involved and because of the intolerable situation in which he is from necessity being held. Since August the 11th, this boy, who had just barely reached 14 years of age and who at the time of his apprehension was in the schoolroom and was, when he was not in school, participating in athletics in the

community, in the Pee-Wee Ball and that type of thing, and living at home in a Christian home with his parents, was brought [Tr. 4] down here and placed in solitary confinement. He is—he's here today. He's alive and he's sane, but it's our contention that it is a marvel that after this long that he has maintained his sanity. It is our contention that not any one of the adults in this room would, if they were charged with a crime, be confined such as this youth is being confined; and it's our further contention that it would be questionable if any of the adults in this room after being confined the period of time that this boy has would be sane. If the Court please, a situation developed the day before yesterday. The hearing was to have been the 24th. On the 23rd, the defendant, through his attorneys, was notified late in the day that the matter could not be heard the next day and that it would be heard on the 31st. The prosecutor's secretary called my secretary and told her it would be the 31st, and my secretary stated at the time to Mr. Morehart's secretary that I did have a trial set for the 31st, which had been set for 2 months. We expect the evidence to show that on the same date, Mr. Supman's secretary was called by Mr. Morehart's secretary and told of the vacation of the hearing [Tr. 5] date the next day and that it would be set for the 31st; and we expect the evidence to show that the secretary of Mr. Supman told Mr. Morehart's secretary that he already had matters set at that time. So that, if the Court please, it's now very definite that the matter is going to go over for some period of time and the hearing will not be apparently for some time which greatly aggravates the condition that does not exist. If your Honor please, the way the situation is in that County Jail, any hardened criminal that is brought in would be put out in the larger area downstairs in the company of other men charged with some disorderly conduct or something or another. With a minor, he is put in a cell, such as your Honor is well familiar with and such as your Honor has stated and did state that at the time the matter of a detention home was up for a vote as being, I believe, improper, maybe intolerable. I'm not sure just what all your Honor said about it, but I know that your Honor recognized the situation and did advise the public that a detention home was needed and there was not a proper place for a minor to be held. I'm sure the officers, any of the officers of this

[Tr. 6] Court would say it is not proper to hold a minor there under those circumstances. And I'm not casting any reflection in any way on the Sheriff's Office; they're doing the best they can under the circumstances. But to keep this boy longer confined there the way it is can do nothing but damage him, mentally and physically, the rest of his life. Now, if the Court please, we have a case here of a boy who has never been involved in any trouble, who has a good reputation in the community. He's always been law abiding, was raised in a Christian home, who is charged with a crime and, by the very nature of our law, is clothed with the cloak of innocence. And it's our contention and we maintain here today, there isn't a single solitary soul living or in existence or anywhere who can come into this Conrt and say this boy was connected or had anything to do with this lady's death. Yet, at the same time, he can be held in solitary confinement on a second degree murder charge. At the same time, Sam Sheppard who was convicted, once convicted, of second degree murder, and which judgment has now been set aside and is out on bond, and the paper says today and the paper said last [Tr. 7] night that he and his wife bought a new forty thousand dollar home in Bay Village. Yet, at the same time, this boy, a child, is being confined in solitary confinement. Now, it is our belief, if the Court please, that this is the only occasion when a boy that age has been confined in the County Jail in solitary confinement. And we think that it is intolerable and it shouldn't be allowed to proceed for another moment. If the Court please, Mr. and Mrs. Whittington, we will establish by the evidence, maintain a Christian home. Mr. Whittington is retired and would spend every bit of the time with his son, and, if the Court for some reason didn't want to allow the boy to be with his parents, as I think the Juvenile Act contemplates, we have others in the community who will volunteer to take the boy into their home and supervise him while this matter is pending. We will establish by the evidence that in this county if a dog, a stray dog is picked up, it is put into a shelter home and allowed to be out into an area at the side of the home where it can be in the light and can exercise. We expect the evidence to show that even the most hardened criminals would never be confined as [Tr. 8] this boy has been confined and that none would be. If your Honor please, if during the war any

of us would have been confined as prisoners of war such as this boy is being confined, immediately the United Nations, the Red Cross, and everybody else would have been up in arms and they would have maintained that it is intolerable treatment of prisoners of war, and we just didn't do it. If your Honor please, it's not the prosecutor's fault; it's not Mr. Elwood's fault, it's not the Sheriff's fault or anybody else that there aren't facilities here, a proper Detention Home. And it's not the Court's fault.

The Court: I'm glad you included me in that, too.

Mr. Kistler: But, if your Honor please, we say the boy is being maintained as he is by the Sheriff under orders from this Court so that it is up to you as to what is proper for a child in these circumstances. All of us here, I think all of us, are parents. We all have sons or grandsons, and I'm sure I know what any one of us would say if it were our son or grandson who was being so held. There is no risk here. We will establish, by all the witnesses that are here, [Tr. 9] that if this boy is put in the custody of his parents or any one of these good folks of Baltimore while this is pending that there is no risk. Yet, on the other hand, damage can be done that will affect this boy the rest of his life. I would suspect that at this point, after having been held that long, he might need psychiatric care; but at least if he is released now while this matter is pending, no further damage would be done. If the Court please, it is up to you. It's under your jurisdiction, and we ask you to contemplate what the Juvenile Act means, which we say—which this Court has ruled to be constitutional. If it doesn't, if the Act doesn't mean that it's for—it's supposed to be for the benefit of a juvenile and that everything's done should be done for the benefit of a juvenile while a matter is pending. If the matter goes on to trial and there is a conviction, naturally the defendant would be punished. But while this is pending to have him undergo the solitary confinement and the intolerable conditions, we feel is just not humane and something that your Honor will not permit further to happen.

The Court: May I ask this? You've [Tr. 10] made a comparison between what happens to us as adults in that institution there as against what's happened to this boy. Do you advocate that this boy be placed with these others, confined with these other people in the jail?

Mr. Kistler: If it please the Court,——

The Court: With the other people in the jail so that he will not be alone. I just——

Mr. Supman: No, sir, your Honor. It is realized that under the statutes that the Court could not permit him to mingle with adults.

The Court: I just wondered. Do you have anything to say, Mr. Morehart? You have some evidence, as I understand, that you want to produce.

Mr. Kistler: Judge, we might add, however, that we would much prefer that to him being up there by himself.

The Court: Are you asking the Court to do that?

Mr. Kistler: It says that the boy shall not be in a prison with adults, I know, but we haven't a detention home, and, if he can't be someplace else, why it would be much preferable for him to be with someone instead of being up [Tr. 11] there by himself. At least it might prevent him from becoming insane or something terrible happening.

The Court: I just asked the question because you in your argument made the comparison. I just wanted to know if that was what you were getting at. Do you want to say anything, Mr. Morehart, or should we hear the evidence?

Mr. Morehart: I don't know what kind of evidence there's going to be, Judge. I don't know that.

The Court: Do you want to say anything before this evidence comes in?

Mr. Morehart: Well, I might, Judge. I don't know what evidence will be presented here this morning. I, notice there is only one branch of the Motion here that the defendant be admitted to bond in a reasonable amount as fixed by the Court or the defendant be immediately released to the custody of his parents pending trial, as provided in Revised Code Section 2151.31 or that he be sent to the Franklin County Detention Home while awaiting trial in this cause for the following reasons:

The Court: What page is that?

[Tr. 12] Mr. Morehart: I'm reading from the second paragraph of the first page. I think that is the Motion. Now, the rest of it is presumably in support of that, isn't that—is that correct?

Mr. Supman: Yes sir, basically.

Mr. Morehart: So I don't know what evidence would be presented. The fact that the parents of the child here are

good people, I don't think that that has much to do with the question here involved, your Honor, as to whether he should be released or not. I only say this, and I believe that the evidence will show, that the defendant here is a delinquent child by reason of the fact that he committed the acts which are complained of in the Affidavit. I think on hearing the evidence, it's going to show that, your Honor. I don't care how law abiding the boy has been, if he committed the act with which he is charged here, then I say that it is of such a serious offense and of such a serious nature that he should not be released to these parents or not be released to anyone else while this is pending. Now I realize that the place we have for detention of juveniles is not all that is to be desired, your Honor; no argument about that. But it is the [Tr. 13] only thing that we have, and the boy while he is here, I understand, now has a television set in his room; and I'm not objecting to that, your Honor. His parents are permitted to see him, I think, at all reasonable times; at least I told the Sheriff as far as I was concerned that at any reasonable times, the boy could be visited by his parents. I'm not objecting to that. But we have a crime here, which it is charged this defendant has committed here, that is of a very, very serious nature, your Honor; and I think to avoid any complications of any nature that might arise, I think the boy should be held pending the outcome here. After all that woman, you know, that woman, Mrs. Willard, she's in the cemetery, and that's not a place most of us would want to be here. I might state to the Court here that it is not unusual for juveniles to be held in this place of detention here in our County Jail. The Court frequently has children or juveniles there in this County Jail. I have a figure here, I believe, the records of the Juvenile Court here show that there were 127 boys and girls under eighteen years of age that were being held in this detention here, such as this boy, in 1965. And they [Tr. 14] were held for various periods of time, any place from a few days up to ninety-two days for one individual, your Honor. And no one before has ever said that anyone has ever gone crazy because of this, and I'm sure that they did not have the privilege of visitors that this lad has had since he's been there. Now I regret always anyone having to be held in juvenile detention or jail, either one, Judge;

we don't like that. But it is a situation of their doing, not ours; and I think, due to the seriousness of the offense, your Honor, that the Motion should be denied and the boy detained. And I'm quite ready to hear this and try this at the earliest opportunity. I regret, of course, that a continuance was necessary, I assure the Court. The Court knows it was four o'clock, I expect or maybe a little after, by the time I got hold of the Court on this matter on the 23rd, and, as soon as I did, we immediately called and tried to reach both attorneys, which we were unable to do so we left the message with their secretaries; and, of course, I want to set a date to hear this and determine it at the earliest possible moment, your Honor.

Mr. Kistler: If the Court please, [Tr. 15] Revised Code 2151.31 says that after a child is apprehended that the child can be released to the parents upon the written promise of the parents to produce the child. Then it also provides, 2151.26, that when a child is charged with a felony that after the child is—if there is a hearing and the child is found to be delinquent, the Court can send the child away to be examined and then can fix a bond for an appearance before the Court. Now this is—this is prior to the hearing on the question of delinquency and certainly if the law contemplates the fixing of a bond after a finding of delinquency, there would be no reason in the world not to fix a bond before the hearing. It is true our Motion reads to fix a bond. I didn't go into that in my argument, but our Motion speaks for itself—to fix a bond or to release the child to the custody of his parents. Mr. Morehart says we're here because of their doing and not ours. This boy is here because of nothing that he has done. He is here—he is being brought in against his will; and the continuances, anything that has happened, in this case, is no way at all attributable to this boy. Now, I may have been wrong when I said he was [Tr. 16] confined on the 11th. He may have been confined before that date. I'm not sure what the original date of confinement was; it might have been a week before that. But, whatever the records show the confinement was, I think the first hearing date was to have been the 11th. But whatever it is, he's been down there considerable time. Now we do have witnesses here, your Honor, as to whether or not, their opinions as to whether there would be any

risk in allowing this boy to be with his parents or on bond or with any of the good folks in Baltimore while this is pending.

The Court: All right. Who do you have?

MARGARET MCDANIEL, being first duly sworn, as provided by law, was examined and testified as follows:

Direct examination

By Mr. Supman:

Q. Would you state your name please?
A. Margaret McDaniel.
Q. Mrs. McDaniel, where do you live?
A. 725 Washington Street.
Q. In Baltimore, Ohio?
A. In Baltimore.
[Tr. 17] Q. Are you related to any of the parties here, Mr. and Mrs. Whittington or Buddy?
A. No.
Q. With reference to their home, where do you live?
A. Catty-cornered across. I can see their home from my living room.
Q. Do you neighbor with the Whittingtons?
A. We're not in and out of the house, but——
Q. You have been in their home?
A. But we've always been friends.
Q. I see, and you're acquainted with Buddy then?
A. Yes.
Q. Has Buddy ever been in and out of your home or your yard?
A. No.
Q. Have you had an opportunity, or excuse me. How long have you been a neighbor of theirs?
A. I don't know when they did move there. I've lived there for thirty some years. Ever since—I was there before they were.
Q. And this would be at least five or ten years that they were there?
A. Oh yes.

Q. Have you had an opportunity to observe Buddy in the neighborhood?

[Tr. 18] A. A lot of times.

Q. Have you seen him in play with other youths or other children?

A. A lot of times.

Q. Do you have any opinion as to his reputation as a law abiding citizen or youth in the area?

Mr. Morehart: I object, Your Honor.

The Court: May I ask, Mr. Supman, the purpose of this line of questioning?

Mr. Supman: As to whether she feels—she would feel any particular fear or any apprehension if he was released in the custody of his parents.

The Court: Oh, we're here. They have evidence. Let's hear it. Overruled.

Mr. Supman: Let me rephrase that. Perhaps it might allay his objections, your Honor.

Q. Are you acquainted with his reputation in the community as an individual?

A. Yes.

Q. And you're acquainted with the reputation that he is held by other people?

A. That's right.

Q. What would you say his reputation to be?

A. Very good.

Q. Would that also pertain to his reputation as to [Tr. 19] being a law abiding citizen?

A. Right.

Q. I imagine this matter has been discussed in this particular neighborhood of yours and in the Whittingtons?

A. Yes.

Q. Among the people that you know and associate, that have this reputation of Buddy, do you feel that there would be any objection to his being placed, during the time that this matter is involved in the Courts, if he's placed with his parents?

Mr. Morehart: Object.

The Court: Overruled. I'll hear it.

Mr. Morehart: Your Honor, the question was, "Do you feel that there would be any objection?", that's what you said.

Mr. Supman: No, no, among the people—well——

The Court: Let's hear it. You have a chance on cross examination, Mr. Morehart.

A. I feel that there is no one in the neighborhood who is afraid of Buddy in any way. We have had no reason to be afraid of Buddy. I have two teen-age girls and I asked them last night if they would be afraid, and we have left them at home at night by themselves, and they say absolutely not; and I feel the girls know Buddy better than I do yet.

[Tr. 20] Q. In the, excuse me.

A. And they are not afraid.

Q. Did you say that you have been in the Whittington home?

A. No I haven't.

Q. You never have been?

A. No.

Q. That's all. You may inquire.

Cross-examination.

By Mr. Morehart:

Q. Did you say also that the Whittingtons have been in your home?

A. Not many times, no.

Q. How recently?

A. Well just lately.

Q. Has, to your knowledge, has Buddy Whittington ever been in your home?

A. He's never been in our home.

Q. He's never been in your home, and you've never been in their home?

A. No.

Q. You live quite some little distance away from them, do you not?

A. Well, I can see the house.

Q. But you have to look across what would be the [Tr. 21] school property, would it not, onto another street?

A. Yes.

Q. I mean Fremont Street runs north and south, and your street runs roughly east and west?

A. Right.

Q. I have no further questions.

Redirect examination.

By Mr. Supman:

Q. Did your children associate with Buddy?
A. No, they're older than Buddy is, and they're girls.
Q. But you say you can see their house. About how far would it be with reference, as the crow would fly, a half block, a block, would you have any way of estimating it?
A. I would say maybe you would consider it a half a block, not quite.

Mr. Supman: Thank you very much. You're excused.
The Court: The Court has a question. Have you heard—you spoke about the reputation or that means what is said about this defendant in the community, have you heard that he is charged as he appears to be here? Have you heard that?

A. Yes. The reference that I—the one thing that I particularly mean is pertaining to school. The elementary secretary is my close friend and she says that [Tr. 22] she wished that more of the boys were like Buddy in school.

The Court: Did she say that with reference to having a charge of this kind placed against them?

A. With—in general. His actions in school.

The Court: That's all I wanted. Anything more?
Mr. Supman: No. Thank you.

(Witness excused)

Mary Mauger, being first duly sworn, as provided by law, was examined and testified as follows:

Direct examination.

By Mr. Supman:

Q. Would you state your name please?
A. Mary Mauger.
Q. Where do you live, Mrs. Mauger?
A. 800 Washington Street, Baltimore.

Q. With reference to the Orville Whittington home, where do you live?

A. We live right south of it.

Q. Are you next door neighbors?

A. Yes, only about a fifty foot lot in between.

Q. I see, and how long have you been a neighbor of the Whittingtons, approximately?

A. It will be nine years in October.

[Tr. 23] Q. During that time, did you have occasion to associate with Mr. and Mrs. Whittington and with Buddy?

A. Yes.

Q. Did you associate with other people with whom they associated in the community?

A. Yes.

Q. Have you had occasion to associate in the community within the last three or four weeks since this incident occurred?

A. Yes sir.

Q. Are you acquainted with the reputation in the community of Mr. and Mrs. Whittington and Buddy then in reference to this matter?

A. Yes.

Q. What would you say the reputation which Buddy Whittington has in the community?

A. Excellent.

Q. You're acquainted that he has been charged with an offense, is that right?

A. Yes sir.

Q. Have you had an occasion to be talking with the various neighbors since this has come up?

A. Yes sir.

Q. And he still enjoys a good reputation?

A. That's right.

[Tr. 24] Q. Have you ever visited in the home of the Whittingtons?

A. Yes.

Q. How frequently in the past?

A. Inside the house, not too much. Just chit-chat.

Q. And has Buddy ever been in your home?

A. Occasionally.

Q. Do you have an opinion as to whether the neighbors, including yourself, would feel there would be any risk in-

volved if Buddy is returned to his parents' home during the pendency of this case?

A. I've never talked to any that would be afraid of him, no.

Q. And you yourself would not be?

A. Absolutely not.

Q. Have you ever seen any acts of unlawfulness or any signs of misconduct on behalf or by Buddy?

A. No, never.

Q. Do you have children?

A. Yes sir.

Q. What are the youngest ones?

A. Well, they're married, both of them.

Q. Do you have grandchildren who visit in your home?

A. Yes.

Q. And what would their ages be?

[Tr. 25] A. Three and five.

Q. Would you feel there would be any risk with the grandchildren who would be visiting you if Buddy was next door with his parents?

A. Absolutely none.

Q. Are you acquainted with whether the Whittingtons have a good Christian home?

A. They do have.

Q. Are you acquainted with their church habits, of the Whittingtons or Buddy?

A. Yes.

Q. Do you by any chance attend the same church?

A. No.

Q. Are you acquainted that Buddy does go to church?

A. Oh yes.

Mr. Supman: I see. I think that will be all. Thank you very much.

The Court: Anything, Mr. Morehart?

Cross-examination.

By Mr. Morehart:

Q. Yes. Mrs. Mauger, how long has it been since Buddy Whittington has been in your home?

A. Not lately.

Q. When you say "not lately," what do you mean? You mean a year, two years, three years?

[Tr. 26] A. They frequently used, well not frequently, would use the phone. I'm not sure whether he ever did or not. He would come to the door. He has been to the door, but to come into the home, no.

Q. Mrs. Mauger, if you believed that the charge which has been placed against Buddy Whittington, that of killing Mrs. Willard, whom I assume that you knew, were true, would you say then that his reputation is good?

A. I don't understand.

Q. Well, if you believed or if it was proven to you that the charge against Buddy Whittington was true in that he did kill Mrs. Willard, would you then say that his reputation was good?

Mr. Kistler: Object.

The Court: What's the objection?

Mr. Supman: We're going after reputation, your Honor, and reputation is something that——

The Court: Now Mr. Kistler, he made the objection. What's the basis of your objection?

Mr. Kistler: That's calling for a conclusion. It's calling for an aswer as to something that doesn't exist, hasn't been established. It's conjectural.

Mr. Morehart: This is cross examination, too, and it has to do with reputation; and she's testified as to reputation, not me.

[Tr. 27] The Court: That's right. Overruled.

Mr. Kistler: What the reputation is and what's charged in this Court would be two entirely different things.

The Court: That's overruled. Go ahead. Maybe Mrs. Mauger would like to have that question repeated.

Court Reporter: I'm not sure I can; I can play back the tape.

Mr. Morehart: I can rephrase it. Mrs. Mauger, if you believed or it was shown to your satisfaction that Buddy Whittington had committed the crime with which he is charged, that of killing Mrs. Willard, would you then say that he had a good reputation?

A. His reputation, as far as I am concerned, is good up until now.

Q. But if that was established, then would your opinion be changed as to what his reputation——

Mr. Supman: I object, your Honor.

Mr. Kistler: We object if the Court please.

The Court: Your objection was overruled. She answered it any way.

Mr. Morehart: I have nothing further.

(Witness excused)

RAYMOND EUGENE KERN, being first duly sworn (witness affirmed), as provided by law, was examined and testified as follows:

[Tr. 28] Direct examination.

By Mr. Supman:

Q. Would you state your name please?

A. Raymond Eugene Kern.

Q. Where do you live, Mr. Kern?

A. 814 Washington Street, Baltimore.

Q. What is your business or occupation?

A. I work for Gaffney Motor Freight here in Lancaster.

Q. Are you acquainted with Mr. and Mrs. Whittington and Buddy?

A. Yes sir.

Q. Where do you live in reference to them?

A. I live up the corner and then I turn right. It's two, three doors across the alley. The back of our lot is within a hundred feet or so of their property.

Q. And from your house to their house, as the crow flies, how far would it be?

A. About two hundred feet.

Q. About two hundred feet?

A. Well, from our houses, it's a little farther. It's about five hundred.

Q. How long have you been a neighbor of the Whittingtons?

A. Five or six years.

Q. During that time, have you associated in the [Tr. 29]

neighborhood with people that associate with Buddy and the Whittingtons?

A. Yes sir.

Q. Do you have the means of knowing Buddy's reputation and the Whittingtons reputation in the community?

A. Yes, I do.

Q. What would you say Buddy's reputation is?

A. I've chased a lot of kids away from my home, but he's been in my house many times and I never, and my wife and my teen-age daughter, never saw anything out of the way, and my mother-in-law is the same way. He's been in the house a lot of times, Buddy has. I had to chase kids away, but I never had to worry about Buddy when he was around.

Q. Then would you say you would be acquainted with the reputation other people would have of Buddy?

A. Yes sir.

Q. And what would you say the reputation would be?

A. I've never heard anything against any of them.

Q. You have teen-age daughters?

A. I've got one. She's married now.

Q. I see. Would Buddy still be welcome in your home?

A. Yes sir.

Q. Do you or your family have any feeling of any risk or fear if Buddy would be placed in his parents' home?

A. No sir. My boys asked several times to come in to [Tr. 30] see Buddy, but I didn't know if it would be allowed. He's only fourteen years old.

Q. You have a son who is fourteen?

A. Yes, and I have one thirteen.

Q. And Buddy plays with your boys?

A. Yes sir.

Q. Have you at any time ever seen or heard of any conduct of Buddy that you feel would be improper or unlawful?

A. No sir.

Q. You are acquainted that he's being charged with being a delinquent and having something to do with Mrs. Willard?

A. Yes sir. May I say something?

The Court: Just answer the questions if you will, Mr. Kern.

Q. And if the Court would see fit to place Buddy under a bond or in the custody of his parents during the pendency

of this case, would you have on behalf of your family or your children or yourself or your neighbors have any fear that there would be any risk involved?

A. No sir. There is more fear right now, than what there would be if Buddy were out.

Q. There's more fear in what way?

A. All ways. We're sure Buddy didn't do this. We [Tr. 31] don't know who did it.

Q. In other words, there's feeling in the community that someone else may have done this?

A. Yes.

Q. Do you have an opinion as to whether the Whittingtons have a good Christian home?

A. Yes, I do. We go to church every Sunday morning, and there's very few mornings I've ever seen that they didn't go.

Q. And Buddy too?

A. Yes sir. They always waved when they went by.

Mr. Supman: You may inquire.

Cross-examination.

By Mr. Morehart:

Q. Mr. Kern, would your feelings be different if you were convinced that Buddy Whittington had committed this crime of killing Mrs. Willard?

A. If I was convinced.

Q. Then they would be different, would they not?

A. My opinion would be different if it was proven to me.

Q. I see. What you have said now as you believe him to not to be dangerous is based on the idea, the belief you have that he did not commit this crime, isn't that right?

A. That's right.

[Tr. 32] Mr. Morehart: I have nothing further.

Redirect examination.

By Mr. Supman:

Q. Have you ever visited the jail down there, Mr. Kern?

A. No, I haven't. I was in the front part there once, I think.

Mr. Supman: Thank you. I think that's all.

(Witness excused)

CLYDE T. TOLLIVER, being first duly sworn, as provided by law, was examined and testified as follows:

Direct examination.

By Mr. Supman:

Q. You're Clyde T. Tolliver?
A. That's right.
Q. Where do you live, sir?
A. 209 North Walnut, Baltimore, Ohio.
Q. Mr. Tolliver, do you have any relationship with the Whittingtons?
A. No, I don't. Only just association.
Q. What is your business or occupation?
A. I'm a paper-maker at Gaylord Container, have been there for eleven years.
[Tr. 33] Q. You have children of your own?
A. Four.
Q. You have any Buddy's age or approximately?
A. Jerry, my oldest son, is the same age as Buddy.
Q. Have you associated in the last several years with Buddy Whittington?
A. Yes, on ball teams and my boy runs around with him quite a bit, what I mean, playing ball and stuff like that.
Q. Has he ever been in your home?
A. Many times.
Q. Has your boy ever been in their home?
A. Yes.
Q. Have you ever visited in the Whittington home?
A. Several times, yes.
Q. Do you have a means of being acquainted with the reputation that Buddy Whittington would have in the community?
A. Yes, I would say so.
Q. What would you say his reputation to be?
A. Excellent.
Q. Buddy plays ball, you say?
A. Yes.

Q. What kind of team?

A. He's played on Pony-League Team ever since, oh I would say, he was 8 years old. Now, he started with the Reds [Tr. 34] Ball Team, and I had him for a couple years there on what they call the Reds Little League and he was always a good player. He was always polite, well mannered.

Q. Did you ever see any act, any illegal acts or unlawfulness or delinquency on behalf of Buddy?

A. Never.

Q. Did you ever see an occasion in ball games when feelings may have gotten a little bit high as far as Buddy is concerned?

A. No. On some of the other players, yes. And, some of the spectators, yes; but as far as the boys and their sportsmenship, no; because, the boys, to them it's a ballgame.

Q. I see. You never saw Buddy act up in any way?

A. No, never.

Q. Never saw him lose his temper?

A. No.

Q. Do you have an opinion as to whether the boys or the parents in the neighborhood would feel there was any risk involved if Buddy was returned to his parents during the pendency of this case or put out on bond?

A. No. There is no fear that I would know of. The fact of the matter, quite a few of the boys are pretty bitter about it because he's down there now. They don't seem to think he should be held. They don't think he should [Tr. 35] have been picked up to start with.

Q. Would you have any thought as to whether Buddy could be placed in your home if the Court didn't want to place him with his own parents?

A. Buddy has always been welcome in my home. He's welcome now in my home.

Q. If the Court would see fit for instance perhaps to place Buddy in your home instead of his own parents' home during the pendency, would you consent to that?

A. Yes. I'd consent to it if Mr. Whittington and his wife are willing. I don't go to church as often as I should. I try to bring the children up right. I think he would do better in his own home, but, what I mean, I have no objection to it. The fact of the matter, my wife and I

have talked it over and the boy, the oldest boy, and they said if that was the only way that he could be released, it would be fine with us.

Q. As far as feelings in the community, so far as you know, they don't feel there's any risk if Buddy would be put out on bond or in the custody of his parents?

A. No. There is no risk as far as I'm concerned.

Mr. Supman: Thank you.

Mr. Kistler: Just one moment, sir.

(Mr. Supman and Mr. Kistler confer)

Mr. Supman: Are you acquainted with whether the [Tr. 36] Whittingtons are known to have a good Christian home?

A. Yes, they do have. I think the preacher is, the parson can say more to that than I can, but the boy's attended church, and I never heard a wrong word one way or the other out of any of them.

Mr. Supman: Thank you. That's all.

Cross-examination.

By Mr. Morehart:

Q. You made the statement that your boy thought he should not have been picked up in the first place. Why? Was that because they feel that he is not guilty?

A. That's right.

Q. The statements you have made are also based on your conviction that he's innocent, is that right?

A. Yes.

Mr. Morehart: That's all.

(Witness excused)

Jim Reed, being first duly sworn, as provided by law, was examined and testified as follows:

Direct examination.

By Mr. Supman:

Q. Would you please state your name?

A. Jim Reed.

[Tr. 37] Q. What is your business or occupation?

A. I am a teacher-coach for the Liberty Union School.

Q. Where do you live at the present time?

A. I live at 441 East Market Street in Baltimore.

Q. With reference to the home of Mr. and Mrs. Orville Whittington, where do you live?

A. I live approximately in the east end of town, and their's is more or less in the middle. It's about, I would say, a mile from their home.

Q. How long have you been a teacher up there?

A. This will be my second year. I've taught one full year.

Q. And what do you teach?

A. I teach Junior High Social Studies, and I coach in free varsity sports.

Q. During the teaching and your coaching, have you had Buddy under you?

A. Yes sir, I have.

Q. And what can you tell us about Buddy's conduct and reputation?

A. I would say among his classmates, first of all, that he has a very good reputation. I think his fellow students have always looked up to Buddy as a leader. He's a quiet type, but I think all the students in the class [Tr. 38] with him respected Buddy. He was classified in 8B, 2 Section. They would classify them into Sections. Now I'm not exactly sure how these were classified but supposedly Buddy is in a group of youngsters who may have difficulty learning, which is not always true because I find there are some students in these sections who do as good a work as sections of supposedly brighter students. This doesn't always hold true. Buddy was a hard worker in class. I taught him history, I tried to teach him history, and I felt that I got through to Buddy. He was a good history student. He had a sense of history, I believe. He got C's and D's, but he had to work for them. He was an honest student. There was never any doubt if a day should come when I thought he was not doing the job he should have, I would ask him if he had read the assignment, and if he had not he would tell me so. There was no hee-hawing around. He would say, "No, Mr. Reed, I did not read it." As far as athletics are concerned, he was a manager for me of the Freshman

Basketball Team. The general consensus of the coaching staff, the high school coaching staff and the junior high coaching staff, is Buddy was the best manager that has come out of the school in many a year. Luckily, I asked Buddy in class one day if he would be interested, and he told me that he would have to talk with his mother and father first to see what they might say. [Tr. 39] He came back with their approval, told me that he would be there every night; which is a requisite of a manager. He must be there. He must be responsible, and these were met completely by him. Only one time, he missed a practice session. He told me the night before that his mother desired him to go to a church meeting, I believe it was. Buddy asked me if this would be okay, and, as he had always been there and had carried out every duty that was assigned him, I told him this would be okay. And this was the only time that he had ever missed. A good example of his acceptance of responsibility——

Mr. Morehart: I'm going to object to any further—this wandering here. He can say what he thinks but——

The Court: Well, Mr. Morehart, I don't know how long this will continue, but I think we'll let him proceed.

A. Just an example by what I mean by his accepting responsibility. He would—. On Tuesday evenings, we went to a different school to practice basketball. He would get out a few minutes early, have everything ready to go for me when I was out of school, if I had a class and couldn't get out quite as early as he did. This was carried on every week as a normal procedure by Buddy.

Mr. Supman: Are you acquainted with the reputation which Mr. and Mrs. Whittington may have in the community?

A. I do not know Mr. and Mrs. Whittington too well. [Tr. 40] I've never heard anything against them.

Q. All right. Would you say then you would be acquainted with the reputation which Buddy would have among the other students?

A. Oh yes.

Q. What would you say about that?

A. I would say it was very good.

Q. Did you ever see anything out of the way as far as Buddy's activities were concerned, anything improper?

A. No sir.

Q. Do you feel there would be any risk if Buddy were placed with his parents or some other suitable home up there during the pendency of this action?

A. No sir.

Q. You are acquainted with the nature of the charge which has been placed against Buddy?

A. Yes.

Q. You have children of your own?

A. I have one, sir.

Q. What age?

A. I have a youngster who is five years old.

Q. Do you feel that Buddy would create any kind of risk around your child?

A. No, certainly not. As a matter of fact, Buddy has played with my young boy during the basketball sessions. [Tr. 41] Q. Even though this charge has been placed against him, if the Court would see fit to place him on any kind of probation, not probation but a bond or with the custody of his parents, you feel again there would be no risk and you would have no objection to him playing with your child?

A. No sir.

Mr. Supman: You may inquire.

Cross-examination.

By Mr. Morehart:

Q. If you believed that the charge which has been placed against Buddy Whittington is true, would you then change your opinion as to the risk involved?

A. I'm sorry, sir. Would you repeat that?

Q. If you believed that the charge against Buddy Whittington, that has been placed against him, were true, would you then have a different opinion as to the risk involved of him being released?

A. If I believed the charge were true?

Mr. Morehart: Yes.

A. I might have.

Q. So, what you're saying is based upon your opinion that the charge is not true?

A. I believe the charge is not true.

Mr. Morehart: That's all. Thank you very much.

(Witness excused)

[Tr. 42] Mae Trimmer, being first duly sworn, as provided by law, was examined and testified as follows:

Direct examination.

By Mr. Supman:

Q. Would you state your name?

A. Mae Trimmer.

Q. Where do you live?

A. Blacklick Road, most northern road in Fairfield County.

Q. You are a housewife?

A. That's one of my positions.

Q. What is Mr. Trimmer's name?

A. Virgil.

Q. I see. Are you acquainted with Mr. and Mrs. Whittington?

A. I surely am.

Q. And with Buddy?

A. Yes.

Q. Are you any relation to these people?

A. No.

Q. How do you happen to be acquainted with the Whittingtons?

A. I had Buddy when he was in the third grade, and I was in their home when he was just a little toddler.

[Tr. 43] Q. Are you a teacher?

A. Yes.

Q. In which school do you teach?

A. I'm just a substitute now, but I taught for twelve years.

Q. I see. How many different years have you taught Buddy in school?

A. I only had him when he was in the third grade.

Q. Have you been able to keep up your acquaintance with Buddy and the Whittingtons in recent years?

A. Yes.

Q. Have you ever visited in their home?

A. Yes.

Q. Have they visited in your home?

A. Yes.

Q. Including Buddy?

A. Yes.

Q. Do you have a means of knowing then the reputation which Mr. and Mrs. Whittington have in the community?

A. They have a wonderful reputation.

Q. Do you know if it is a good Christian home?

A. Yes, it is.

Q. How about Buddy's reputation?

A. It is excellent.

Q. Has Buddy ever been in your home by himself or [Tr. 44] just with the parents?

A. Just with the parents.

Q. You live out a ways, is that right?

A. Yes, about seven miles, I guess it is.

Q. Do you know if among the people you associate with that are acquainted with the reputation of Buddy, whether, as to whether it is felt there would be any risk involved if Buddy were placed with his parents or on bond during the pendency of this case?

A. I haven't heard of anybody that would be afraid to have him out.

Q. And you personally would feel no risk?

A. No.

Q. He would still be welcome to visit in your home?

A. He certainly would.

Q. I see. Is there anything else you can tell us about this reputation and as to being a law-abiding citizen?

A. Two or three years ago, when we went to Stoutsville together, attending camp meeting, we had some boys who just tried their best to see how much patience Buddy had. They really teased him terribly, and I felt he had a right to tear into them, almost. But he just took it like a gentleman. I've seen him teased terribly. He never showed any signs of temper or fighting back.

Q. What kind of camp is this you referred to?

[Tr. 45] A. It is church camp.

Q. I see. Did you teach Sunday School?

A. I teach Sunday School, but I've never had Buddy in a Sunday School Class.

Q. Do you know him as a regular attender at Sunday School and church?

A. Oh yes, sure. We miss him so much these last few weeks.

Q. Is there a Youth Fellowship or some kind of youth group?

A. Yes.

Q. Are you around the church Sunday evenings when that is in attendance?

A. Yes.

Q. Are you acquainted as to whether Buddy is a regular attender there?

A. Buddy attends regularly.

Mr. Supman: You may inquire, sir.

Cross-examination.

By Mr. Morehart:

Q. Mrs. Trimmer, you are aware, of course, of the charge here against Buddy Whittington, that is of killing Mrs. Willard?

(Witness nods head yes)

The Court: Is your answer "yes"?

[Tr. 46] A. Yes.

Mr. Morehart: Would your opinion be different if you believed that to be true?

A. I don't believe it to be true, no.

Q. I say if you would believe it to be true, would your opinion be different as to your safety then?

A. No.

Q. It wouldn't be any different?

A. No.

Q. Even if you believed it to be true?

A. I don't—no. I don't believe it to be true.

Q. And nothing can convince you that it is true, is that right?

A. He only.
Q. He only?
A. He only. If he would confess.
Q. And if he did that, would that make a difference to you, as to your belief then in his reputation, Mrs. Trimmer?
A. I don't think so.
Q. You don't think it would even at that, even if it was proven to your satisfaction that he had killed Mrs. Willard, it would not make a difference to you as to his reputation?
A. No. I would say no.

[Tr. 47] Mr. Morehart: All right. Thank you very much.

(Witness excused)

(Ten Minute Recess)

HAROLD SAGER, being first duly sworn, as provided by law, was examined and testified as follows:

Direct examination.

By Mr. Supman:

Q. Would you state your name please?
A. Harold Sager.
Q. Where do you live?
A. 224 North Street, Baltimore, Ohio.
Q. What is your business or occupation?
A. Production Manager at Altens Foundry and Machine Works, Lancaster.
Q. How long have you been living in Baltimore?
A. All my life, 42 years.
Q. Do you live in proximity to the Whittington home? How far do you live from them?
A. They're in the center of town, and I'm in the northeast corner, probably three-quarters of a mile.
Q. Are you acquainted with the Whittingtons and Buddy?
A. Yes.

[Tr. 48] Q. In what particular manner are you best acquainted with them?

A. Through the church. We're all members of the same church.

Q. Which church is that?

A. New Zion E. U. B., which is a country church?

Q. I see, and what is your capacity with the church?

A. I'm Sunday School Superintendent.

Q. How long have you been in the teaching capacity in the church?

A. I've been Superintendent for twelve years.

Q. How many members in your congregation?

A. About a hundred twenty-five.

Q. Have you had occasion to teach Buddy?

A. Once or twice. Not as a regular teacher. When I filled in as an assistant when the teacher wasn't there. I filled in a few times.

Q. Are you acquainted with the attendance of Buddy in your Sunday School?

A. Yes.

Q. You're acquainted with—in the neighborhood or in the area with people who are acquainted with Mr. and Mrs. Whittington?

A. Yes.

Q. You have the means of knowing the reputation among [Tr. 49] those people of Mr. and Mrs. Whittington?

A. I believe so.

Q. And what would you say it to be?

A. I would say it is very good, especially from neighbors. I've heard the statement that you couldn't ask for any better neighbors.

Q. And are they considered to have a good Christian home?

A. Yes sir.

Q. What can you tell us about the reputation that Buddy has in the community or in the church?

A. In both cases, I would say it would be the same. He has reputation without question as far as honesty or anything like this is concerned. Especially in the church, I would say it is very good. Almost every Sunday night in the year, I pick him up and take him to Sunday night service and Youth Fellowship. My wife and I are Youth Directors, and we have first-hand contact with him. We've also

had contact with him at Stoutsville Camp Meeting when we've been chaperones there.

Q. As Youth Advisors, you have occasion to be sitting around in conference with the people who are attending the Youth Fellowship?

A. Yes.

Q. How large is your Youth Fellowship there?

[Tr. 50] A. At the present time, we have about twenty-three members.

Q. And is there a discussion back and forth, pro and con, different subjects?

A. Yes, every Sunday night.

Q. Are you acquainted with whether Buddy regularly attends Sunday School?

A. Yes, he does.

Q. How about church? Is he old enough to normally——

A. Sunday School and Sunday morning worship, and then Youth Fellowship at seven o'clock, and worship service in the evening beyond that. Normally, and I believe now and then, well normally, he's in church for three services a week, two on Sunday morning and one on Sunday —well two on Sunday night actually. Actually, there are four services.

Q. The extent of his regularity would be what?

A. Ninety-five per cent of the time. I think we were looking back the other day. The first six months of this year, I think, he missed Youth Fellowship one night.

Q. Have you at any time ever seen any misconduct on behalf of Buddy?

A. Absolutely not.

Q. Have you ever heard of him conducting himself improperly?

A. No sir.

[Tr. 51] Q. Do you feel that there would be any risk involved in the church or in the community if Buddy were placed by the Court during the pendency of this case in the home of his parents or some other neighbor?

A. I don't know what it would be. I can't think of any risk there would be.

Q. You have children of your own?

A. I have two. I have one just a year older than Buddy.

Q. Do they associate together?

A. Sure.

Q. Has Buddy ever visited in your home?

A. He hasn't visited to stay overnight, but our home is always open to the Youth Fellowship members when we have fifteen or twenty, or sometimes twenty-five; and he's been there numerous times.

Q. Has he ever conducted himself in an improper manner?

A. No.

Q. Have your children ever visited in Buddy's home?

A. They've been in it a few times, but not what you would really call visiting, I guess.

Q. Do you feel that Buddy would create any risk in the neighborhood or in the community if he were placed by this Court with his parents?

[Tr. 52] A. No. He doesn't have any temper. I've never seen him mad in my life.

Mr. Supman: That's all. You may inquire.

Cross-examination.

By Mr. Morehart:

Q. Mr. Sager, you are aware of the charge against Buddy Whittington here, that he killed Mrs. Willard? You're aware of that, I assume?

A. I'm aware of the charge of second degree murder. That's what I've heard anyhow.

Q. If you were convinced that the charge against Buddy were true, then would you say then that there would not be any risk involved in letting him loose?

A. I'm not convinced that the charge is true.

Q. But assume that you were convinced, would you then say that there would be no risk?

A. I don't know how I can answer a question like that when I don't feel that way. I feel that he's not guilty, and I feel there is no risk.

Q. Your basis then for your feelings—. At the present time, you are convinced in your own mind that he's not guilty and that is the basis for your reason of your saying that there would be no risk, is that right? Is that true?

A. Yes, and even if it should be possible you could prove him guilty, I'd still say there's no risk.

[Tr. 53] Q. You'd still say there's no risk?

A. That's right.

Mr. Morehart: That's all.

(Witness excused)

Rev. C. S. Poling, being first duly sworn, as provided by law, was examined and testified as follows:

Direct examination.

By Mr. Supman:

Q. Would you state your name please, sir?
A. Rev. C. S. Poling.
Q. Where do you live, sir?
A. Route 2, Baltimore.
Q. Are you affiliated with a church at this time, Rev. Poling?
A. I am, yes.
Q. Which is that church?
A. New Zion Evangelical United Brethren.
Q. Are you acquainted with Mr. and Mrs. Orville Whittington?
A. I am.
Q. And Buddy who is sitting here?
A. I am.
Q. How long have you known these people?
[Tr. 54] A. Seven years approximately.
Q. Have you been associated with this church approximately that long?
A. I was pastor four years and in the interim that I was not pastor and in all the rest of the years; I was pastor there five years; but I've been associated with them between times.
Q. During that time have you—you did have an opportunity to associate then with people with whom Buddy and the Whittingtons associated?
A. I did.
Q. Would you have a means of knowing their reputations in that area and community?
A. I do.
Q. What would you say the reputation of Buddy Whittington is?
A. Excellent.

Q. And Mr. and Mrs. Whittington?
A. Very good.
Q. Have you visited in their home?
A. I have.
Q. Would you be able to describe this as a good Christian home?
A. It is.
Q. What about Buddy's attendance at church affairs, [Tr. 55] Sunday School or church?
A. Very regular. Regular.
Q. Is this over a period of several years that you've been involved with the church?
A. It has been.
Q. And Mr. and Mrs. Whittington are—they are the same?
A. They are the same.
Q. Have you at anytime ever seen any misconduct or heard of any on behalf of Buddy Whittington?
A. I have not.
Q. You are acquainted that there's been a serious charge placed against Buddy at this point?
A. I am.
Q. Would you have an opinion as to whether there would be any risk involved if the Court should release Buddy into bond or into the custody of his parents during the pendency or the hearing of this case?
A. I personally think there is no risk.
Q. Have you had occasion perhaps to be discussing this with other members of your church or the Youth Fellowship?
A. Not with the Fellowship. I discussed it with two or three other members.
Q. And do they feel the same as you?
[Tr. 56] A. They feel the same. In fact, I discussed it with a dozen or more. There is that feeling in the church and in the community.
Q. That there is no risk?
A. There is no risk.
Q. Have you ever counseled with this boy?
A. I have. Not—Yes, I have recently.
Q. And prior to this incident?
A. Yes, he was in my class in catechism for a number of months. I was very personally connected with him.

Q. Would there be anything in that counseling that would indicate any type of risk factor for this Court to consider?

A. Nothing at all.

Mr. Supman: You may inquire, sir.

Cross-examination.

By Mr. Morehart:

Q. Rev. Poling, you said that you have talked to a number of the people in the community relative to the risk of his being released, is that correct?

Mr. Supman: Excuse me. I didn't hear the question.

Rev. Poling: Is that the way he stated the question?

Mr. Supman: What was that question, I'm sorry?

Mr. Morehart: My question was that I asked him if he had said on direct examination that he had talked to a [Tr. 57] number of people in the community relative to the risk involved in his being released. I thought that was what you had testified to on direct examination.

Mr. Supman: Something to that effect.

Rev. Poling: That wasn't the direct question though.

The Court: Ask the questions please and let counsel have his witness answer the questions without interruption please.

Mr. Morehart: I understood you to say, Rev. Poling, that you had talked to a number of people in the community relative to whether or not there would be any risk involved in Buddy Whittington being released. Is that—Did you make that statement?

A. That's correct.

Q. That you had talked to a number of them?

A. Yes. At least one-half dozen, let's put it that way.

Q. I see, and now can you tell me, Rev. Poling, whether their idea of whether or not there was any risk involved was based on their opinion as to his innocence?

A. State it again please.

Q. Was their opinion that there would be no risk involved based upon the fact that they thought that he was innocent. Is that correct?

A. That's correct.

[Tr. 58] Q. Do you think their opinion would be different if they thought he was guilty?

A. Am I here to pass judgment or as a character witness?

The Court: You're here expressing an opinion, Reverend, and this is a proper question.

Rev. Poling: Well then, state it again please.

Mr. Morehart: Do you think that their opinion as to whether or not there would be any risk involved would be different if they thought he was guilty?

A. That's possible, yes. If they thought he was guilty.

Mr. Morehart: I see. Thank you. That's all.

Redirect examination.

By Mr. Supman:

Q. One other question. Have you visited Buddy in the jail?

A. I did.

Q. How many times have you been there?

A. Once.

Q. Where was he in the jail when you were there?

A. He was standing in the, he was standing in the toilet when I was talking to him. Is that right?

Buddy Whittington: The toilet and everything else.

Rev. Poling: Whatever you would call that place. I [Tr. 59] talked to him through the bars there.

Mr. Supman: Were you able to see the size of this cell?

A. Yes, pretty definitely.

Q. Would you have an opinion as to whether you feel this is a proper place for a young boy Buddy's age to be for a period of time?

A. I certainly do not. This county has needed a jail for thirty years, a different set-up than we have now. I've been in this county for a number of years. In fact, I was born here.

Q. You feel that as far as the adequacy of these facilities, they would not be so?

A. Right.

Q. Do you feel that there would be some harm that would come upon Buddy or any juvenile his age to be there for any length of time?

A. I certainly do.

Mr. Supman: That's all sir.

The Court: I'd like to ask—Rev. Poling, is it?

A. It is.

The Court: Do you remember a few years ago receiving a communication from me asking your assistance and your church's assistance to obtain a detention home?

A. I do, but I wasn't pastor then. I had retired. [Tr. 60] I'm just serving now temporarily.

The Court: But you did get such an appeal from me?

A. I got such an appeal, yes.

The Court: I don't know whether you heard any talks that I made; you may have heard of some talks that I made.

A. Yes, I never heard the talks, no.

The Court: That was the only question I had to ask. Maybe I shouldn't put my two cents in on that, but I——

Mr. Supman: I assume from what you have said that you would hardly endorse any talks that the Judge may have made calling attention to the complete inadequacy of these facilities. Is that right, sir?

Rev. Poling: How was that stated?

Mr. Supman: Would you agree that the facilities would be very inadequate and that they would need something done?

A. I do agree to that, yes.

Mr. Supman: That's all. Thank you.

(Witness excused)

OLLIE MAE WHITTINGTON, being first duly sworn, as provided by law, was examined and testified as follows:

[Tr. 61] Direct examination.

My Mr. Supman:

Q. What is your first name, Mrs. Whittington?
A. Ollie Mae Whittington.
Q. And you're the mother of Buddy?
A. That's right.
Q. Mrs. Whittington, up until this incident occurred some place around the 3rd or 4th of August, who was living in your home?
A. Buddy and my husband and myself.
Q. How many rooms are in your house?
A. We have six rooms and bath.
Q. How many bedrooms?
A. Three bedrooms.
Q. Was there a separate bedroom for Buddy?
A. Yes sir.
Q. Are you employed?
A. No sir.
Q. Is Mr. Whittington employed?
A. No sir, not now. He's retired.
Q. Are you able to devote full time to the supervision of Buddy if the Judge should feel that this would be more appropriate than being in the jail, or any appropriate place?
A. Yes sir. I have been all his life. I've been [Tr. 62] home. I've never been gone from him. I've taken care of him full time, and I can now, and I'm willing.
Q. If the Judge would place Buddy on bond or in your custody, would you be able to exercise twenty-four a day supervision of Buddy?
A. I surely would.
Q. And is Mr. Whittington available to do so, also?
A. Yes sir.
Q. And he's not employed?
A. No sir.
Q. Mr. Whittington is retired, is that right?
A. Yes sir.
Q. Has Buddy at any time ever been violent or committed any illegal act to your knowledge?
A. Buddy's been everything we ever wanted in a son.

He's never at any time—. He's good around the house, and he never gets mad about anything. He's been a good boy.

Q. Has he always been obedient?

A. He surely has been. Sometimes, if he'd get unruly, you could sit down and talk to Buddy and maybe he'd have a little different opinion of something that we had, but we could always reason with him.

Q. You have visited Buddy in the jail?

A. Yes sir.

Q. Do you have an opinion as to what continued and [Tr. 63] enforced incarceration in that cell, as to whether it would affect Buddy's mental well being?

Mr. Morehart: I object to this, your Honor. I don't think the witness is competent to testify to that.

The Court: I think she can answer. This is the boy's mother.

Mr. Supman: Do you have an opinion?

A. Yes sir. I think anybody being penned up like that by themself for as long as he's been, or for as long as he might have to be, I think even myself, or even an adult, it would work on your mind. It couldn't help but do that, just penned up there all day long.

Q. You feel that if this continues that it would be injurious to your son's health?

A. I think it would be.

Q. Would you be willing to personally be responsible for Buddy's appearance at any and all hearings or proceedings that may be called by this Court?

A. Yes sir.

Q. Would you be prepared to sign a bond, including your home and so forth, as security for this?

A. Yes sir.

Q. And you would be physically able and willing to not have Buddy out of your sight?

A. Yes sir.

[Tr. 64] Q. Or any other reasonable conditions or any other conditions that the Court may impose?

A. Yes sir.

Q. And you're asking the Court then for him to be placed in your custody and care during the pendency of these proceedings?

A. That's been my prayer.

Q. Do you—Anything else you have to say in this regard?

A. No. We'll take Buddy to church and do the best by him we can. If he's in our care, we'll do just like we always have. We always went to church and attended things in the community, and we'll do the best we can do by him.

Mr. Supman: You may inquire.

Cross-examination.

By Mr. Morehart:

Q. Mrs. Whittington, do you go to see Buddy?

A. Yes sir.

Q. How frequently do you go?

A. Every day.

Q. Every day. Have you ever been denied the right to see him?

A. No sir.

Q. Does Buddy have a television set there?

[Tr. 65] A. Yes sir.

Q. Does he have anything to read?

A. Well, he could have if he wanted something to read.

Q. If he wants to read, he could read, I mean; it's available?

A. Well not there, but we could take it if he wanted it.

Q. And nobody would object to that?

A. I don't think so. I never asked, but I don't think so.

Q. But you think he doesn't want anything to read, is that right? At least, he never asked for anything?

A. Well, he reads some. He has some magazines there that he reads.

Q. He does have some magazines that he reads, and he has the television set?

A. Yes.

Q. Have you noticed any change in Buddy since he's been there? Does he appear to be healthy?

A. Well, when he sits there all day long, sometimes he doesn't say much when we go in. I think his mind might be dulled by being there. There's nothing for him to do, just sit there. It would affect your mind, too, or anybody's.

[Tr. 66] Q. You think it's affected his mind so far, Mrs. Whittington?

A. I don't think it's done it any good. I don't think—

He's quiet. I don't know whether it has or not. I don't think it's done him a bit of good being there.

Q. Has it affected his health physically, do you know, Mrs. Whittington?

A. I haven't had him to a doctor or anything. I can't tell that sir.

Q. Has there been any complaint from him about his health?

A. One night when we were down there, he said he wasn't feeling too well, or he hadn't been the night before.

Q. That might even happen if he were home with you, might it not?

A. It could.

Q. Has there been any necessity to consult a doctor or to have a doctor see him because of his physical health?

A. Not yet.

Mr. Morehart: I don't think I have anything further.

Redirect examination.

By Mr. Supman:

Q. Is there an electric light in his cell?

A. No sir.

Q. Is there any place to put a light in so that he [Tr. 67] could read, to your knowledge?

A. I don't believe there is, not to my knowledge. I haven't been inside, but I don't know that there would be, no sir.

Mr. Supman: Thank you. That's all.

(Witness excused)

Orville A. Whittington, being first duly sworn, as provided by law, was examined and testified as follows:

Direct examination.

By Mr. Supman:

Q. You're Orville A. Whittington, sir?

A. Yes.

Q. And you're the father of Buddy Whittington?

A. Yes sir.

The Court: Would you please, Mr. Whittington, talk a little bit louder because I don't hear you.

Mr. Supman: You've heard the questions that were put to your wife?

A. Yes.

Q. And you are retired, sir?

A. Yes sir.

Q. If the Judge would see fit to place Buddy either on bond or in your home pending the outcome of this case, [Tr. 68] would you be able to devote twenty-four hours a day time and attention and supervision of Buddy?

A. Yes sir.

Q. Is that your wish?

A. Yes sir.

Q. Do you have any opinion as to whether the continued incarceration of Buddy in a cell, such as he's been in, would have any effect on his health or well being?

A. I think it would anybody to stay in there very long.

Q. In your particular son's case?

A. Yes sir.

Q. Are you willing then to do anything that the Court would so instruct if he would let Buddy out on bond or on any conditions?

A. Yes sir.

Q. Would there be any hesitations at all in Buddy being out, as far as you're concerned?

A. No sir.

Q. Do you feel there would be any risk to yourselves or anybody else in the community?

A. No, I don't.

Q. To your knowledge, has Buddy ever been violent or committed any offenses against persons or property in an illegal manner?

[Tr. 69] A. Not that I ever knew of.

Mr. Supman: You may inquire, sir.

Cross-examination.

By Mr. Morehart:

Q. No questions.

(Witness excused)

Mr. Supman: We rest, your Honor.

The Court: Outside of your opening statement, do you have any statements you want to make or arguments about this matter or not?

Mr. Supman: Does Mr. Morehart have any witnesses?

Mr. Morehart: No, I'm not going to call any witnesses.

Mr. Kistler: Yes, if your Honor please, we would like to make a closing statement. Now I think that there has been eliminated any question in any of our minds as to whether or not there could be any risk in Buddy being released on bond or into the custody of his children—or into the custody of his parents. I don't believe in any case, there's been a more respectable group of witnesses offered than what there has been here today. There has been offered residents [Tr. 70] of Baltimore who know more about this and are in a better position than anyone else to feel the feeling of the community and to know the feeling of the community. Not, of course, as to his innocence, but as to whether or not there is any risk in this boy being released. You've heard some of the finest people in Baltimore testify about how he's attended church, how he participates in athletics, a well-behaved kid. The neighbors who know him best would have him in their homes at any time, around their teen-age children, around everyone involved. I think now the Court can feel perfectly clear in regard to this matter that there is no risk involved and that what is contemplated by the Act that the minor be left with his parents pending a hearing, that there is now no reason at all not to grant the prayer and the request of the defendant.

The Court: Mr. Morehart?

Mr. Morehart: Your Honor, we've heard a number of witnesses here that's true, and everyone of them on cross examination admitted that they were convinced of his innocence. Naturally, if they're convinced of the innocence of of the defendant, naturally they would feel there [Tr. 71] would be no risk in having him released. Several did say they might feel differently if they were convinced of his guilt, you see, which makes an awful lot of difference certainly. If I was convinced of his innocence, or anybody else, I would say there couldn't be any harm in having him released, your Honor. I'm not saying anything about these people that were called here, and they have a right to their opinion, your Honor, no question about that. But I'm sure

that we could probably bring a number of people in here, too, who would say that it would be very detrimental and that they would not want him released at the present time. So your Honor, I still say, in view of the gravity of the crime with which the defendant is charged here, that the defendant should be held pending the hearing.

Mr. Kistler: If the Court please, what counsel say in this matter; of course, Mr. Supman and I are both firmly convinced and always have been that there is no risk in any way involved and what the prosecutor thinks or what I think isn't important. It's a question of what the evidence is that's been offered. This matter was set for hearing, and there's been no evidence, [Tr. 72] offered whatsoever, to show or to establish or to discredit the testimony offered by the defendant that there is no risk. The record is quite clear that there is no risk and it is the best thing for the boy to be released, and that the feeling in Baltimore is that he should be released.

The Court: Well, the Court has this to say. This isn't a case of what public opinion, popularity poll, might be about this thing. This Court has a responsibility to this community. This Court has a responsibility to this young man. Motion denied.

The Court: Now gentlemen, I'd like counsel to sit down here and let us fix as early a time as we can for this hearing.

(Hearing on Motion concluded)

[Tr. 73-74] IN THE JUVENILE COURT OF FAIRFIELD COUNTY, OHIO

No. 6183-J

In the Matter of

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

HEARING

Date: September 2, 1966.

Before: Hon. ROBERT U. HASTINGS, Judge.

APPEARANCES:

For the State of Ohio: E. Raymond Morehart, Prosecuting Attorney, Fairfield County, Ohio.

For the Defendant: Judson C. Kistler, Attorney at Law, 124½ W. Main Street, Lancaster, Ohio; and Jack Supman, Attorney at Law, 124½ W. Main Street, Lancaster, Ohio.

[Tr. 75] PROCEEDINGS

The Court: There were some Motions filed a little bit ago in this case, Mr. Prosecuting Attorney.

Mr. Morehart: I believe so, your Honor.

The Court: Do you have them there?

Mr. Morehart: I have copies of them.

Mr. Supman: The originals—the one secretary brought them in.

The Court: "Motion. Now comes the Defendant, Buddy Lynn Whittington, a minor 14 years of age, and again moves the Court that an official court reporter be employed to take the testimony in any further hearings in this said cause, and suggests that Alvin A. Omsberg, the official court reporter of the Common Pleas Court, or a reporter from the firm of Armstrong and Oakey or some other firm of accredited reporters be employed to take the testimony and the proceedings so that during the course of any further proceedings if a question is asked to be read back that the same can be done and also so that the testimony can be typed

and transcribed after the same is taken." Do you have anything to say about that, Mr. Kistler?

[Tr. 76] Mr. Kistler: Yes sir, we have, your Honor. But we have another Motion to make, your Honor, before we argue that matter, an oral Motion for a dismissal of these proceedings.

The Court: Now that—we're talking about this motion right now.

Mr. Kistler: But even before we argue that one, your Honor, we would like to make the Motion to dismiss the proceedings for something that occurred within the last fifteen minutes. If your Honor please, in the last few minutes, before this matter proceeded for hearing at nine, in the witness room were certain witnesses for the prosecution, Mr. Willard, Mr. Jack Willard, a sister of the decedent and a pathologist, and these witnesses were located in the witness room which is next to the clerk's office of the Juvenile Court. In the Clerk's Office were located Mr. Rutherford, Mr. Elwood Phillips, Dr. Kersell, Mr. Ned Webb, and the Court was in there just a few moments ago along with the prosecutor in the presence of all these men. It is our contention that we cannot have a fair trial and protect the rights of this defendant by proceeding with this hearing when all these witnesses were [Tr. 77] gathered together in the presence of the Court in a room in which there is an opening between the witness room and the clerk's room where anything, any statements that were made could be heard by all the witnesses in either room. And in view of that, we feel that this proceeding can only be dismissed and this defendant released immediately.

The Court: Motion overruled. Now we come to this Motion, which I just read to you. Do you have anything to say to this Motion?

Mr. Kistler: Yes, your Honor, we certainly have with the Court's permission. We requested an official Court Reporter to take this testimony in these proceedings at the time this proceeding started.

The Court: When? I don't find that in the file.

Mr. Kistler: Well, we didn't file that of record, but we asked that——

The Court: Oh, you just thought that?

Mr. Kistler: No sir. We asked to have the record taken.

The Court: Will you tell me now—. Will you tell me

now, Mr. Kistler, what is your authority to have a record taken of testimony in [Tr. 78] a Juvenile Court proceeding for a juvenile?

Mr. Kistler: Well, I would say the authority would be a case decided recently by the Court of Appeals in the Pickaway County area in which a record was taken which could not be properly transcribed. The matter, I believe, went to the Court of Appeals and, I believe, a new trial was ordered because a record, a proper record, could not be made.

The Court: What is that case?

Mr. Kistler: I can't tell you the case.

The Court: Oh, you don't have the citation?

Mr. Kistler: I do not have the citation, but it was called to my attention and I would say——

The Court: Where did you get that, from some official court reporter of some kind?

Mr. Kistler: Yes sir. I did get it from an official court reporter.

The Court: Well, let's have it. I'm here to hear your citation of law.

Mr. Kistler: Mr. Omsberg related to us that he had heard that that did occur.

The Court: He had heard. Did he give [Tr. 79] you the citation?

Mr. Kistler: No sir, he did not.

The Court: And you cannot give it to me?

Mr. Kistler: I cannot give you that citation, but I can say this, your Honor, that in this case we have a serious matter pending against the defendant. We feel that since this defendant is subjected to the laws of the state of the land that he'd have the same right as any other defendant in any proceeding to have a record taken.

The Court: And the basis for the record, is what? What is the basis for your record?

Mr. Kistler: For the defendant to properly prepare himself. Now in this case for instance, a good example of it, we had testimony taken last Thursday. We requested in writing, which is filed, the typing of that evidence to be used in this proceeding. We requested it, I think shortly after, either Monday or Tuesday. Now, if the Court please, we were told the day before yesterday that the record coudn't be typed, that the record wasn't typed because the

reporter hadn't received an order from you to do so. Today, we were told that we couldn't have that record, due to the press of business, for at [Tr. 80] least thirty days.

The Court: Now, as a matter of fact, you were told, my information is you were told, by the Court Reporter that she couldn't get at it. Is that right?

Mr. Supman: That's right.

The Court: All right, that's right. So let's don't misstate to me what the Court ordered or didn't order. You know the Court here has an official Court Reporter. This Court does.

Mr. Kistler: That I can't say, Judge, but I can say this——

The Court: Well, the Court's telling you that we have an official court reporter and not only an official court reporter but an official assistant court reporter. It's a matter of record and so this motion is overruled.

Mr. Kistler: May we say this——

The Court: Yes.

Mr. Kistler: We asked to have some questions read back at the last hearing and they could not be read back. So we feel that we cannot proceed with the present reporting system.

The Court: I see. All right. Now the next Motion is, "Now comes the defendant, Buddy [Tr. 81] Lynn Whittington, a minor 14 years of age, and moves the Court that this said Complaint and this entire proceeding filed against him in this said cause be dismissed for the following reasons: The defendant has been confined for a period of twenty-seven days, to wit since August 5th, 1966, in solitary confinement in an iron cell and cage, all as forbidden by the Constitution of the United States, the Constitution of the State of Ohio, the Federal decisions, and the Revised Code of the State of Ohio, and the Civil Rights Act, all of which forbid cruel and inhumane punishment being inflicted upon any individual, and especially where a minor who has only reached the age of fourteen on July 23rd, 1966, so that the rights of this minor as guaranteed by everything that we stand for and the legal system of jurisprudence of the United States and The State of Ohio, have been taken from this minor defendant. The defendant, Second, the defendant has been refused bond even after various Motions and requests have been made by the defendant for the fixing of

the same and even after a hearing was had in this Court in which a large number of witnesses testified, including a minister, a schoolteacher, [Tr. 82] a Sunday School Superintendent, neighbors of the defendant and others, all of whom established that there was absolutely no reason for the holding of this boy in solitary confinement in the iron cage that he is now being held in and in which hearing no evidence was offered whatsoever to give any indication that the boy should be so held or that theere was any risk in any way in releasing the boy to bond or to his parents, and it was established that the parents were fine Christian folks who would spend every moment of their time with the boy if he was released and in which hearing it was indicated by everyone, including the Prosecutor, that the parents of the minor defendant were fine Christian people, as is the defendant, who has never been in any kind of trouble whatsoever. Three, the defendant has been deprived of his constitutional rights in that at the beginning of the hearing he requested a court reporter to take all the testimony, meaning a reporter who could read back the questions and then type up the record and such was not granted to him. Four, the defendant in this case was deprived of rights in that he was examined by an official of this Court and by other law enforcement officers and [Tr. 83] subjected to gruelling interrogation for a period of several hours without first being advised of his rights which are: One, he must be informed in clear and unequivocal terms that he has the right to remain silent. Two, the warning of the right to remain silent must be accompanied by an explanation that anything he says can and will be used against him in Court. Three, he must be warned not only that he has the right to counsel but also that if he is indigent a lawyer will be appointed to represent him. Four, if he indicates in any manner at any time prior to or during questioning that he wishes to remain silent, the interrogation must cease. Five. At a hearing in this court on the 24th day of August, 1966, testimony was given and then the defendant requested, by a written request, that the testimony and the record of the proceedings be typed up so that the same would be available for him at a hearing on Friday, September 2nd, 1966. On Wednesday, August 31st, 1966, in the late afternoon, the defendant's attorney called the official Court Reporter as to when the

testimony and proceedings and the record would be ready and was informed that she had not proceeded to type the [Tr. 84] same because she had not been instructed to do so by the Court." Which the other counsel denies and says differently. "Six, That this cause be dismissed for the reason that the defendant has not been granted a speedy trial as contemplated by the Revised Code of the State of Ohio, the Constitution of the United States and the State of Ohio and the decisions of the Federal Court. The defendant was arrested and confined on Friday, August 5th, 1966, the arraignment was set for two o'clock p.m. at the same time a request was made for a continuance until Monday or Tuesday, August 8th or 9th since the Courthouse was closed on Saturday, August 6th, 1966. The Prosecutor was unable to be present at any hearing until August 11, 1966 at nine o'clock a.m. On August 11th, 1966, the defendant and his counsel appeared and were ready for the hearing and the Prosecutor stated to the Court that he was not ready to proceed with the hearing and evidence and again asked for a continuance at which time the defendant objected to the continuance unless the defendant would be released on bond or in the custody of his parents. The Prosecutor then notified the Court that the matter could not be [Tr. 85] held until August 18th, 1966, at which time the defense counsel would be out of town and had so notified the Court in writing over two months prior." May I ask if the counsel who says he does that, was he an attorney for the defendant two months prior?

Mr. Supman: Mr. Whittington was not a defendant two months ago.

The Court: Did you represent Mr. Whittington two months ago?

Mr. Supman: Mr. and Mrs. Whittington, the parents, but not the boy.

The Court: Well you're citing that your letter——

Mr. Supman: Excuse me, your Honor. We may have been in error in the explanation. There was a letter written by me to this Court over two months ago that I would be out of town this period of time.

The Court: Let me ask you. Is it the habit of Courts to keep a running file wherein notice is given by attorneys as to when they are going to be out of town?

Mr. Supman: It has been recommended to me by, maybe not by this Court, your Honor, but [Tr. 86] I know some of the other Courts, they need to know; as a matter of fact, there has been a request that has come down to the attorneys from the Common Pleas Court that they want to know when the attorneys are going to be out of town as far in advance as possible so no cases would be set during that period of time, and also, I feel, that it is courtesy.

The Court: Continuing, "The matter was then set for August 24th, 1966 at nine o'clock a.m. The defendant again renewed his Motion to be released on bond or to be sent to some suitable place other than the solitary cell in which he was being incarcerated and which Motion was again denied. It was then approximately nine days from August 11th, 1966, before the Prosecutor filed a precipe for a necessary witness, a doctor who was the pathologist in this case in an adjoining county, after which the precipe was then sent by certified mail. That the said doctor had still not been notified on August 22nd, 1966, that he was to be in Court on August 24th, 1966, and this was the reason given by the Prosecutor why the hearing could not be then held on August 24th, 1966. In fact, it was between 4:30 and 4:45 on [Tr. 87] August 23rd, 1966, that the defendant or his counsel was notified that the hearing would not be held on August 24th, 1966. The defendant again renewed his Motion and presented testimony by a large number of witnesses without contradiction that the defendant should be put out on bond or in the custody of his parents. Listening to all this evidence, the Court without any evidence being offered to oppose the Motion whatsoever, denied the Motion. Seven, That the Cruel and inhumane solitary confinement in an iron cage that this defendant has been subjected to, has already done him irreparable harm and to continue to keep him so cruelly and inhumanely confined can only lead to insanity or some other grievous result from which this fourteen year old boy will never recover." Let me ask, counsel who filed this Motion, isn't this Motion a repetition of what others you have had?

Mr. Kistler: If the Court please, we do not believe so. Since the last hearing, these other things have occurred in regard to a request for the testimony.

The Court: Now that request of the testimony, was that made to the Court?

[Tr. 88] Mr. Kistler: It was made to the official Court Reporter.

The Court: Now so you knew that there was an official Court Reporter. Now let me ask you something else. Is it—do you find that it is the practice of Courts that just the moment you ask an official Court Reporter to type out a record that it's done immediately upon your request?

Mr. Kistler: Yes sir. During the course of a trial, that has been our experience.

The Court: Regardless of what else that Court Reporter may have to do?

Mr. Kistler: No matter how busy the Court Reporter is, during the course of a trial, they have always typed it.

The Court: Now this was not during the course of a trial when you asked this, is that right?

Mr. Kistler: This was during the intermission between hearings. We requested that——

The Court: Oh, I see. What else is there that is new and not repetitious about this Motion?

Mr. Kistler: If the Court please, so [Tr. 89] many more days have elapsed since the time of the last hearing on this boy's confinement. This boy—It is our opinion, if the Court please, that never in the history of the Juvenile Courts has a minor been so confined as this boy has been confined, when he's presumed innocent, when he maintains his innocence, and subjected to what he has been subjected to. If your Honor please, this last week's confinement may mean the difference between his life, between his sanity and his insanity, and, if the Court please, his position is much more strong now than what it was at the time the last Motion was made.

The Court: Let me ask you this. You've made similar kind of statements at the time you presented your evidence of character witnesses, and my recollection is, you told the Court you were going to have a physician from Columbus to testify to those things, am I right?

Mr. Kistler: We had stated your Honor before, that we would like to have our physician down to testify.

The Court: And you told me you were going to have him.

Mr. Kistler: We intended to have him.

[Tr. 90] The Court: And when the hearing was had, he didn't appear.

Mr. Kistler: We weren't able to have him. It was a question of financial reasons that we couldn't have him at that point. There was also—We just weren't able to make the arrangements to have him here that morning.

The Court: Well, let me ask you this, Mr. Kistler, this particular Motion asks to have the Complaint dismissed. Isn't the charge that was filed alleging this boy to be a delinquent, it still was set for today for hearing of the facts, am I right?

Mr. Kistler: That's true, if your Honor please, but——

The Court: All right. Now let me ask you this. Because all these things which you allege here, you think that dismisses a charge of delinquency without a trial?

Mr. Kistler: Yes, if your Honor please, we think so. We think this boy now, in serving almost thirty days in solitary confinement, has paid when he is just being charged more dearly than he would be and could be if he were found guilty after hearing in this Court. He wouldn't [Tr. 91] be subjected to this type of thing after he was found guilty.

The Court: Well, Mr. Kistler, I think we concluded at the time you brought this question of place of detention up, wasn't it brought out, and everybody recognized the fact, that the place of detention is the only place that the Court has to detain anyone, wasn't it?

Mr. Kistler: What? The what your Honor?

The Court: That the only place the Court had to detain anyone was where he is detained?

Mr. Kistler: No sir. It was brought out and the evidence established that he could be released to the custody of his parents.

The Court: I mean detained.

Mr. Kistler: Or to bond or to, we suggested, the Columbus Detention Home, and your Honor said you wouldn't call the Franklin County to ask if he——.

The Court: May I ask what the authority is for this Court to detain anyone in the Franklin County Detention Home?

Mr. Kistler: The authority is your [Tr. 92] Honor that in some previous case some two years ago that you called and requested the Court to——

The Court: And I couldn't get it.

Mr. Kistler: That is right. Two years ago.

The Court: Two years ago?

Mr. Kistler: Something like that, you stated. I don't recall.

The Court: That still doesn't say that I have the authority to put anyone in that institution, does it?

Mr. Kistler: No, your Honor, but it is our contention that the Juvenile Code is so drawn as to clothe your Honor with power to do what is best for a boy, and certainly, as your Honor has said time and time again, that is not a proper place for a child.

The Court: But didn't it come out in the hearing that that was the only place that I had available for detention?

Mr. Kistler: I don't believe there's any evidence offered to that effect.

The Court: Well, I thought the discussion here recognized that fact. As a matter of fact, one of your own witnesses was interrogated [Tr. 93] about—maybe he was requested to support this thing. Mr. Prosecuting Attorney, you want to say anything about this?

Mr. Morehart: Your Honor, just this. That if you assumed that all this was true, that was said here, it would be no basis for dismissal of the Complaint, your Honor.

The Court: That's the Court's feelings, and most of the things that are talked about in this Motion have been before the Court before; and we're here this morning for a trial of the facts. That Motion is dismissed.

The Court: Here's another Motion. "Now comes the defendant herein through his counsel and renews the Motion to dismiss the proceedings against him by reason of the fact of the unconstitutionality of the Juvenile Code provisions." Now I take it the rest of this verbiage in this Motion is argument. Am I right about that, Mr. Kistler?

Mr. Supman: Well, yes sir, but——

The Court: Or should I read all this argument? "The Juvenile Statutes as presently constituted deprive this defendant of his constitutional rights to a fair and impartial trial. [Tr. 94] That the manner in which the statutes——"

Mr. Morehart: Your Honor, may I interrupt for just a second?

The Court: Yes sir.

Mr. Morehart: The Court has already ruled that the

Juvenile Code Act is not unconstitutional, and this is certainly a repetition of that Motion.

The Court: I'm looking forward to whether maybe they add some other thing.

Mr. Morehart: I see.

The Court: There is so much to this Motion, and I asked counsel if the rest of it was argumentative, and I got no answer.

Mr. Supman: If you would like an answer, your Honor, we feel that there are specific examples which we would like to bring to the Court's attention why we feel that they are.

The Court: But weren't—wasn't that argument presented at the time we heard the Motion on the constitutionality?

Mr. Supman: Some of these in here, your Honor, were not gone into. At the previous hearing, my recollection is that we felt that the Act was unconstitutional because it did deprive [Tr. 95] him of certain rights, but there are some additional items below that were not covered previously.

The Court: Would you like to point them out to the Court for the purpose of saving time? We're here for a trial, and am I to understand that these—all these Motions filed this morning are delaying tactics?

Mr. Supman: No sir. No sir. We would like to have a ruling on them today, and ask the case to be dismissed. Or, if overruled, we are ready to proceed. We are ready to proceed, your Honor.

The Court: I am a little bit impressed with the volume of these things. I'll read it. I'll finish reading it. I'll go over it again. "The Juvenile Statutes as presently constituted deprive this defendant of his constitutional rights to a fair and impartial trial. That the manner in which the statutes are presently constituted and out of necessity have to be administered by this Court, the Court's self appointed investigating officer was called by the Court to investigate this minor defendant for an offense which may or may not have been committed by this [Tr. 96] defendant, which this defendant does deny, but which subsequently did result in a charge. That the statutes as constituted require the investigating officer to submit facts to the Judge of this Court as a basis and grounds for issuing a warrant and a complaint for an arrest of the same defendant who will be tried by the Judge."

Mr. Supman: Same Judge.

The Court: "Thusly and in consequence thereto, these statutes do not in any manner permit any Court who has heard facts to be the basis of an arrest, to be able to render a fair and impartial decision. In fact, such as in this case, the officer of the Court not only made the investigation but failed to acquaint the defendant with his constitutional rights, that he was entitled to an attorney, to remain quiet and that any statements he made would or could be used against him. That now when this very same question will be presented to the same Court on a Motion to suppress the evidence and there will be testimony by the same investigating officer who under the statute must be appointed by the hearing Judge, as to the merits of this Motion. That the same investigating officer who will testify has [Tr. 97] been permitted to remain in Court to hear all of the Motions and testimony which Court is under the complete control and supervision of a Judge as provided by the statutes, whereas, actually the Judge does have control and did exercise control of his Court and excluded others but did allow the investigating officer to remain in the Court Room when he will be called later as a prosecuting witness. That under the circumstances as recited and as provided by the Statutes, a Judge under these Statutes is placed in this compromising position. That this Court has now to pursue under the Statutes in this case to hear this cause after having previously heard the claims of the prosecution and his own investigating officer. It is submitted that in a serious felony charge which according to the Statutes would authorize the Judge to find this boy a delinquent and possibly bind him over to the Grand Jury with the resulting publicity that he has already been found guilty of committing the offense with the resulting notoriety so as to deprive him of a fair and impartial trial according to the standards as layed down by the Federal Court in the recent Sheppard case. Wherefore, it is again submitted [Tr. 98] that the Statutes which put the defendant and any Court in this situation in light of the Supreme Court and other Court rulings out of necessity has to be declared unconstitutional as an abridgment of the rights of this defendant to a fair, speedy and impartial trial." Now, I'd like to hear what you have to say then about this matter.

Mr. Supman: Your Honor, we feel that the statutes of Ohio which permit the things to occur as set forth in this Motion are unconstitutional.

The Court: Have you any evidence to support these allegations in here as facts?

Mr. Supman: We submit—Well now, if the Court would, for instance—Yes sir, I feel that most of these facts would be within the preview and within the knowledge of the Court. For instance, that Mr. Bill Rutherford, who is the Investigating Officer and who is in the hearing at this time and has been, is appointed by the Court. It is our understanding——

The Court: That's right.

Mr. Supman: All right. And that Mr. Rutherford is an officer of this Court and as such he reports to your Honor. [Tr. 99] The Court: Now, the fact that I want to know and the allegation that you made is that he did report to this Court facts. Have you anything to support that allegation?

Mr. Supman: There was a Complaint which was submitted to your Honor, facts on which he based his warrant and a complaint against this defendant.

The Court: In other words, a Complaint was filed?

Mr. Supman: Yes sir.

The Court: Which I think is a fact. I think the Complaint is in the file.

Mr. Supman: Yes sir, and I think Mr. Rutherford signed that Complaint.

Mr. Morehart: Oh no. Oh no.

Mr. Supman: Mr. Phillips, I believe, may have signed this Complaint.

The Court: You made the statement that Mr. Rutherford filed a Complaint, is that true or not?

Mr. Supman: According to the records, Mr. Phillips signed it, but we submit the investigation was prepared to a great extent by Mr. Rutherford who was an officer of this Court.

[Tr. 100] The Court: All right. Call Mr. Rutherford in here. We'll swear him and we'll find out if that's true or not.

WILLIAM RUTHERFORD, being first duly sworn, as provided by law, was examined and testified as follows:

The Court: Here is the person you are alleging who did these things and you ask him.

Mr. Morehart: Your Honor, may I ask what affect—what does this have to do with the constitutionaltiy of the statutes of Ohio? The Motion is that the statutes are unconstitutional.

The Court: But in the context of all this argument down here, they've raised the question that the Court had knowledge of all this investigation and is now apparently prejudiced. I suppose that is what they're leading to.

Mr. Morehart: But that is immaterial as to the constitutionality of the statutes, your Honor.

The Court; But they're contending that the system, is that right?

Mr. Supman: Yes sir, the statutes or system.

[Tr. 101] The Court: Now, we're concerned here, Mr. Morehart, about the fact that they allege is true—the facts on which they base this.

Mr. Morehart: But your Honor, that has nothing to do with the constitutionality of the statutes.

The Court: Let them then inquire as to the support of their allegation of facts here. Remember this is recited here in a Motion so that it would be made a record, and I would like to hear what they have to say about these—. It is said Mr, Rutherford filed a Complaint, and then it is argued he didn't. Now let's hear it.

Mr: Kistler: If the Court please, is your Honor, calling this witness?

The Court: No. I just suggest that we have him available for your examination. I wanted to know what your—the facts were upon which you based all this allegation.

WILLIAM RUTHERFORD.

Direct examination.

By Mr. Kistler:

Q. All right sir. Will you state your name please?
A. William Rutherford.

Q. Mr. Rutherford, what is your official position in [Tr. 102] the Juvenile Court of Fairfield County, Ohio?

A. I am the probation officer in the Juvenile Court.

Q. And by whom are you appointed?

A. By Judge Hastings, Juvenile Judge.

Q. The Judge of the Juvenile Court of Fairfield County, Ohio. And were you so employed on the second day of August, 1966?

A. I was.

Q. On the 2nd day of August, 1966, did the death of a Mrs. Willard in Baltimore, Ohio, occur?

A. Not that I know of.

Q. Tell the Court whether you know if a Mrs. Willard died around the first of August, 1966.

A. Are you saying on the first of August?

Q. The first week of August?

A. No. I don't think—I think Mrs. Willard was deceased before the 1st day of August.

Q. Mr. Rutherford, I'll ask you if, to your knowledge, a Mrs. Gladys Willard did die on the 29th day of July, 1966?

A. Yes sir. I'm sure she did.

Q. And when you said before you didn't know it was because——

A. It was because it wasn't the 1st week in August.

Q. I see. Now how did you become acquainted with the fact that Mrs. Willard lost her life on or about July [Tr. 103] 29th, 1966?

A. Shortly after ten o'clock p.m. on that date, I received a call from the Fairfield County Sheriff's Office by a Deputy Jerry Hampson asking me to proceed to Baltimore, Ohio, at the request of the Prosecuting Attorney.

The Court: Let me interpose here. I—That is not pertinent to the facts that you allege in this Motion.

Mr. Kistler: Well, we'll get to that, if your Honor——

The Court: Well, let's get to that right now. The allegation in the Motion is that the statutes require the Investigating Officer to submit facts to the Judge of this Court as the basis and grounds for issuing a warrant and a Complaint for the arrest of the same, who would be tried by the same Judge. Now, let's get to the point whether or not he did submit facts to the Judge in order to have a warrant issued and a Complaint made. That's the thing I'm interested in knowing right now.

Mr. Kistler: Mr. Rutherford, after you made the investigation as Investigating Officer of this Court, did you advise the Juvenile Judge anything at all in regard to your investigation?

[Tr. 104] A. Yes sir, I did.

Q. And did you submit to the Judge and advise the Judge of facts which would authorize the issuing of a warrant?

A. No sir, I did not. The Judge was not consulted as to whether a warrant should be issued or charges should be brought. Mr. Morehart, the Prosecuting Attorney, is my legal advisor, and I conferred with him and Mr. Phillips in Mr. Morehart's office, and a decision was made then.

Q. Before the affidavit was filed and before the warrant was issued by this Court, did you advise the Court of your findings?

A. I advised the Court as to the situation that had happened, as to the evidence and what had happened. I didn't at that time have a lot of evidence, and the evidence was not confined to the Judge, no sir.

Q. Did you advise the Court of your findings as a result of your investigation?

A. I advised him I had been called there and that I was there and the type of situation that arose.

Q. So that you did advise him as to whom was being accused and——

A. No one was being accused.

The Court: Wait a minute. You're getting far afield. The point is, Mr. Rutherford, is this a Journal [Tr. 105] Entry that was signed by me authorizing the issuance of a warrant?

A. Yes sir, it is.

The Court: Now that was signed by me and presented to me for signature, when?

A. It's filed on August 5th.

The Court: Was that pursuant to any of your information or was it pursuant to something else?

A. This was pursuant to a Complaint that was filed by Elwood Phillips in this Court.

The Court: Is this that Complaint?

A. Yes sir, it is.

The Court: Is that what you presented to me for the basis of my ordering a warrant?

A. That's right.

Mr. Kistler: Your Honor, may I ask another question?
The Court: Go ahead.

Mr. Kistler: Mr. Rutherford, isn't it true that one Complaint was filed and then just immediately before the defendant was brought in for hearing that you filed—you served to Mr. Supman and I as attorneys for the defendant a second Complaint?

A. I served you a second Complaint and a second warrant.

Q. Why was the second Complaint filed?

[Tr. 106] A. Because the wording on the first Complaint was not complete.

Q. Now then Mr. Rutherford, before any Complaint was filed in this Court, did you not advise the Court of your investigation and your findings and what you found the evidence to be and your conclusion in regard to the matter?

A. No sir, I did not. I informed the Court of the investigation, the kind of investigation, who was involved, but as to the evidence, I did not.

Q. Did you make as a result of your findings accusations against the defendant before this Affidavit was filed by Mr. Phillips?

A. I said to Mr. Morehart I felt that the defendant participated in this action, yes sir. It was all part of my investigation for him, and along—in conjunction with Mr. Phillips, the reason that the Complaint was filed.

Q. Is it your statement that never at any time did you say to the Court your opinion from your findings as Investigating Officer of this Court into a matter of alleged delinquency?

Mr. Morehart: I object.
The Court: Object to that until a time is stated.
Mr. Kistler: Prior to the time of filing of the affidavit by Mr. Phillips.
Mr. Morehart: I object too, your Honor. That's [Tr. 107] already been answered. He's already answered that question.
The Court: Objection sustained because the question has been answered. Is that all about the allegations you made in your Motion?
Mr. Kistler: One other thing, if we may. Mr. Ruther-

ford, did you state to the Court prior to the time of the filing of the Affidavit or at any time close, very close thereto, that it was your opinion that the defendant should not be released under bond?

Mr. Morehart: I'm objecting.

The Court: Objection sustained. That question has been answered as to the facts in this matter.

Mr. Kistler: Mr. Rutherford, by virtue of your employment as an Investigating Officer, when you do investigate an alleged delinquency, especially in a matter as serious as the charge in this case, do you not have the duty of reporting to the Juvenile Judge your findings as a result of the investigation you make?

Mr. Morehart: I object.

The Court: What's the basis for a question like that.

Mr. Kistler: To show exactly what we're contending in the Motion if the Court please.

The Court: You brought out the facts as to whether he did consult with me or not about the facts prior to the [Tr. 108] issuance of a Complaint and that was denied. Now what's the purpose of this question? Whether it's his duty or not. The fact has been established that he didn't.

Mr. Kistler: It goes to the question of constitutionality, if the Court please. Here is a man, who by virtue of his employment, we think——

The Court: Before you ask that question, I'd like to know from you your authority in this Act, where this Act directs that it's his duty to investigate complaints prior to the filing of the warrant.

Mr. Kistler: I'll have to ask him that question then, if the Court please.

The Court: Well he—. You've got the statute. Is there anything in this statute that requires him to make investigations for police duty prior to——

Mr. Kistler: I think that's the duty——

The Court: Have you seen it in the Act? Have you looked at the Act to find that direction of the Act?

Mr. Kistler: I can't say that I can do that, but I can say it is our opinion that the Juvenile Officer appointed by the Juvenile Court is to investigate delinquency, alleged delinquency.

Mr. Morehart: Your Honor, whether it is in the Act or isn't in the Act doesn't make any difference, and it is an improper question to ask this defendant, or this witness.

[Tr. 109] It's not up to him to say what is in the Act and what isn't.

The Court: Mr. Morehart, if they're claiming the Act is wrong, I want to know from them the Act that says that, and they just give me their opinion. You don't know whether it's in the Act, such a direction, or not, do you?

Mr. Kistler: No sir. But we know he did investigate.

The Court: Objection overruled, or sustained on that question. Anything further as to the support of these allegations here that the Court was, had knowledge of all this prior to even the making of a Complaint? That's what you allege in here, isn't it?

Mr. Kistler: By virtue of the requirements of his office.

The Court: Of which you cannot cite, is that right?

Mr. Kistler: If your Honor please, he did investigate on this case, and he does in all others. I know we wouldn't, Fairfield County wouldn't, be paying him to make these investigations——

The Court: You cannot show me where the Act requires that he do that, and, therefore, your premise here is incorrect. This Motion is overruled.

The Court: Now we have another Motion that was filed. "Now comes the defendant, a minor 14 years of age, by his counsel and moves the Court to suppress any evidence of statements purportedly [Tr. 110] made by the defendant for the reason that the defendant only became 14 years of age on the 23rd day of July, 1966, and that he was not represented by counsel when interrogated by law enforcement officers and representatives, his rights were not explained to him, and he was not old enough to be able to appreciate and understand the interrogation and the accusations being made against him, so that defendant respectfully requests the Court to suppress any such evidence in any proceedings before this said Court." Now gentlemen, this is your Motion that we'll hear right now.

Mr. Kistler: If the Court please, the law definitely, or the cases definitely, provide that before a minor is interrogated in any manner that he must be informed first in clear and unequivocal terms that he has the right to remain silent. Two, the warning of the right to remain silent must be accompanied by an explanation that anything he says can and will be used against him in Court. Three, he must be warned not only that he has a right to counsel but also

that if he is indigent a lawyer will be appointed to represent him. Four, if he indicates in any manner prior to or during questioning that he wishes to remain [Tr. 111] silent, the interrogation must cease. Now it is our contention that this boy is entitled to——.

The Court: Do you have some authority for that?

Mr. Kistler: Yes, that's from Miranda vs. Arizona, vs. New York; Westover vs. United States; California vs. Stewart, and it is the exact quotation by the Chief Justice of the United States. If the Court please, we believe it is our duty to bring to the Court's attention at the earliest possible time before a hearing that the Motion to Suppress will be made at any time if any evidence is offered purporting to be statements of this defendant, and we are bringing the matter to the Court's attention at this time because we will make that objection on the basis of these Federal cases at any time such information is offered.

The Court: You have something to say, Mr. Morehart?

Mr. Morehart: Yes, your Honor. I am familiar with the Miranda case. It is a very recent case out of the Supreme Court here. I think it does not warrant the interpretation which counsel for the defendant are putting upon it [Tr. 112] though. That has to deal with a person in custody and that is what the cases there arose from, a person's confession taken while in custody of the police or other investigating officers. I submit, also, your Honor, that there may very well be statements of the defendant which will be related to this Court here, and I submit also that at no time that any statements were made was the defendant accused of having committed this crime, and also any statements that were made or any questions that were asked were made in the presence of the defendant's parents, both of them. And I also submit, your Honor, which the evidence will probably bring out that the defendant was warned even though I do not feel under those circumstances it was necessary—the defendant was warned anything he might say would be used against him and he need not make any statements and he was entitled to counsel, and any conversation that went on, went on with his parents there, and the officers in this case—I may say this. That no investigating officer has talked, to my knowledge, to this defendant since the night this crime was committed, your Honor, and as far

as questioning for several hours that is absolutely [Tr. 113] and utterly ridiculous. It is not true.

The Court: In other words, the prohibition against questioning witnesses and having their statements repeated is after they have been made—taken into custody and arrested.

Mr. Morehart: After they have been arrested, after they are in custody, that is what this case holds, the Miranda Case, your Honor. And I think there isn't any question —I think the case has gone way too far as it is, and I don't think certainly that it should be extended.

The Court: It isn't the purpose of this Court to overrule—. You have something to say?

Mr. Kistler: Yes, if the Court please. In this particular case, it is our contention that the boy was accused that night and that he was not told of his rights prior to the time of the accusations being made. That he was in a sense in custody at the time this gruelling took place over a period of several hours up until approximately two o'clock in the morning, and it is our contention that the Federal Courts, the United States Supreme Court, has definitely ruled on this matter and that these rights of a minor must be protected and if there are any statements offered at any [Tr. 114] time in this matter, we will object to them being admitted.

The Court: This Court is here to protect the rights of this young man. The Court has carefully gone over the Miranda Case, and the Court finds that the Miranda Case does not prohibit the investigation by a police officer or other officers but it does prohibit the gruelling of people after they have been taken into custody as you said. And the Court had that case marked in here by a paper and that paper has disappeared, the case having been laying around on this desk here, and I don't find my mark. But it's the Court's interpretation that that will be decided—each matter will be decided on the facts when the case comes up. Motion overruled.

The Court: Now we've progressed an hour and twenty minutes on these Motions, and I think before we go ahead with the testimony, it's near a recess.

(Ten Minute Recess).

(All Counsel Waived Opening Statements).

Mr. Kistler: If your Honor please, before proceeding with the evidence, we would like [Tr. 115] to move for a separation of witnesses.

The Court: Let me ask you this. I don't know whether Mr. Rutherford is going to be a witness in this case or not.

Mr. Morehart: He's subpoened as a witness.

The Court: He is, and you would like to have him separated even though he acts as a bailiff here?

Mr. Supman: Yes sir.

The Court: You would.

Mr. Morehart: Your Honor, I have no objection. If you want the Deputy Sheriff here to act as Bailiff, I have no objection.

The Court: Can you act as Bailiff? Are you a witness?

Mr. Morehart: I have not subpoened him.

The Court: And he won't be a witness?

Mr. Morehart: He probably wouldn't be in this Court, I don't think. I don't expect to use him in this hearing.

The Court: I'll grant the separation of witnesses, but we ought to have a Court Bailiff. Maybe Mrs. Fricker can act as Court Bailiff. She's [Tr. 116] not going to be a witness, is she?

Mr. Morehart: No. If you want to have Mrs. Fricker, that's quite all right. I have no objection.

Ned K. Webb, being first duly sworn, as provided by law, was examined and testified as follows:

Direct examination.

By Mr. Morehart:

Q. Will you state your name please?

A. Ned K. Webb.

Q. Where do you live, sir?

A. 1261 East Fair Avenue, Lancaster, Ohio.

Q. What is your occupation or employment?

A. I am employed at the Lancaster Eagle Gazette Newspaper as a photographer and lab technician.

Q. Mr. Webb, did you have occasion on or about July 29th of this year, to be called by the Sheriff's Office of this County to take certain photographs?

A. I did sir.

Q. Where did you go?

A. 215 Fremont Street, Baltimore, Ohio.

Q. What time of the day or night was it approximately?

A. Approximately 25 minutes till 9 p.m. on that date.

Q. Is that when you were called or when you arrived [Tr. 117] there?

A. When I arrived there.

Q. When you arrived there, what did you observe when you arrived there?

A. There was a lot of people standing around on the outside. Officer Phillips from the Baltimore Police Department told me he had a body inside the house, took me in, and showed me the area. We backed off there a little bit waiting for the coroner to show up.

The Court: Did I get it, "you backed off"?

A. We backed out of the room.

The Court: I see.

Q. Now did the coroner arrive?

A. Yes sir, approximately five or ten minutes later after I arrived at the scene.

Q. Were you asked to take any pictures of this body?

A. Yes sir.

Q. Did you take some pictures?

A. I did sir.

Mr. Morehart: Will you mark these for identification please?

(Photographs are marked).

Q. Mr. Webb, I'll hand you what have been marked for purposes of identification, State's Exhibits 1, 2, 3, and 4, ask you to look at them, and see if you can identify them [Tr. 118] please. I think they're in order.

A. Yes sir.

Q. What are they?

A. They're pictures of a bedroom at said residence at 215 Fremont Street in Baltimore, Ohio. Also pictures of a body and also picture of the outer frame of the bed where the mattress and springs and bed clothing have been removed.

Q. Mr. Webb, State's Exhibit No. 4, was that—when did you take that? Was that taken before any of the bedding and so forth had been removed?

A. Yes sir.

Q. That's a picture of the room?

A. The room was very small, so I took the picture as far as I could take it. But this shows the general shape the bed was in when I arrived.

Q. In order to get the pictures which are marked State's Exhibits 2, 3, and 4, what was done?

A. The bedspread, sheets, and blankets were removed. Also the springs and the mattress were lifted off, and the outer frame of the bed was left intact.

Q. Are those pictures—do they clearly represent just exactly what you saw when the top of the bed was removed?

A. Yes sir.

[Tr. 119] Q. To your knowledge, had the body been moved prior to the time you took these pictures?

A. No sir.

Q. Do these pictures, in each of them, clearly represent the articles which they represent as you saw them at that time?

A. Yes sir.

Q. Did you develop these pictures yourself?

A. I did sir.

Q. You took them and developed them?

A. Yes sir and printed them.

Q. Do you, sir, know the person, the name of the person whose body is shown in State's Exhibit 1, 2 and 3?

A. Personally?

Q. Yes sir.

A. No. I didn't know her personally.

Q. You did not know her personally?

A. No sir.

Q. There are some, two men whose pictures appear in this State's Exhibit 4. Do you know who they are, sir?

A. On the left facing the picture is Chief of Police Elwood Phillips of the Baltimore Police Department, and on the right is Dr. L. L. Kersell, County Coroner of Fairfield County.

Mr. Morehart: All right. You may cross-examine.

[Tr. 120] Cross-examination.

By Mr. Kistler:

Q. Mr. Webb, who was present when you came to the residence which is indicated in these pictures to take the

pictures that you have taken, which are marked for identification, State's Exhibits 1, 2, 3 and 4?

A. Who requested them?

Q. No, who was present when you came to take the pictures?

A. The Chief of Police at Baltimore and also, I believe, he's the Fire Chief, Mr. Grile.

Q. Anyone else, at all?

A. And the coroner.

Q. Is that Dr. Kersell?

A. Dr. Kersell.

Q. Can you, of your own knowledge, say whether or not the body had been moved or anything had been moved in the room at the time you took these pictures?

A. Before or at the time they were taken?

Q. Before you arrived?

A. No sir, I cannot state that.

Q. Can you state whether or not the body was moved or anything had been moved in the room?

A. No sir, I cannot state whether it had been moved.

Q. So, there had been various individuals there with [Tr. 121] the body prior to the time you took the pictures?

A. I could not state that sir.

Q. Beg pardon?

A. I could not state that sir, who was in there and who wasn't in there because I was not there at the time.

Q. That's right. So, you had no way of knowing how many may have been there before?

A. No sir.

Q. And you had no way of knowing whether the body had been moved in any way or whether any articles in the room had been moved before these pictures were taken, indicated and marked for identification "State's Exhibits 1, 2, 3 and 4."

A. The Chief of Police of Baltimore, Mr. Phillips, informed me that——

Mr. Kistler: Object as to what was stated.

The Court: You asked for something on cross examination. I think he can state as to his knowledge.

Mr. Kistler: Exception.

The Court: Objection to what someone told you, that is sustained.

Mr. Kistler: Mr. Webb——

A. Yes sir.

Mr. Kistler: I believe that's all.
Mr. Morehart: Nothing further.

[Tr. 122] Redirect examination.

By Mr. Morehart:

Q. Well, I do have one further question, if the Court please. Mr. Webb, from the time you arrived there, was anything moved until these pictures were taken?

A. No sir.

Q. I mean, was the body moved until these pictures were taken?

A. No sir. I insisted if they moved anything, let me get a picture before they moved it.

Q. Of course, the bed was torn up for you, in order for you to get pictures of the body, is that right?

A. That's right. It was intact when I got there.

Q. It was intact when you got there. According to picture No. 4, that is Plaintiff's Exhibit No. 4 there, that is the way the bed appeared when you got there, is that correct?

A. Yes sir.

Mr. Morehart: That's all.

The Court: Let me ask a question. Was number four taken, Mr. Webb, before 1, 2, and 3?

A. Yes sir.

The Court: Is that what I understand?

A. Yes sir.

Recross-examination.

By Mr. Kistler:

[Tr. 123] Q. Mr. Webb, was the bed taken apart when you were there?

A. Yes sir.

Q. When you first walked in, was there a coverlet on the bed?

A. Yes sir. Bedspread.

Q. And who dismanteled the bed?

A. Officer Phillips and the Fire Chief, Mr. Grile, and myself.

Q. Anyone else——

A. Not to my knowledge.

Q. helped in the dismanteling of it?

A. No sir. The coroner was there, but I don't believe he helped.

Q. Was the body moved in any way when the bed was dismanteled, when you were there?

A. No sir.

Q. Did anyone check the body while you were there to determine if there was life in the body?

A. The coroner did.

Q. While you were there?

A. Yes sir.

Q. How did he make his check?

A. That's a medical question, sir, and——

Q. No, I'm asking for exactly what took place. Did [Tr. 124] he check the body before the bed was dismanteled or after the bed was dismanteled?

A. He looked at the body, under the bedspread. And then we took pictures. We took pictures before he looked.

Q. When did he check the body to determine if there was life?

A. After we lifted the mattress and springs and stuff off the bed.

Mr. Kistler: That's all.

Mr. Morehart: That's all. Nothing further.

(Witness excused)

(Dr. L. L. Kersell called, but off floor temporarily)

HERMAN WILLARD, being first duly sworn, as provided by law, was examined and testified as follows:

Direct examination.

By Mr. Morehart:

Q. Will you state your name please?

A. Herman Willard.

Q. Where do you live sir?
A. At Baltimore.
Q. Do you have a street address?
A. 220 Fremont Street.
Q. How long have you lived there?
[Tr. 125] A. Around forty-two years.
Q. What relation were you, if any, to Gladys Willard?
A. Husband.
Q. Did she live with you there at the Fremont Street address?
A. She did, yes.
Q. Directing your attention sir, to July 29th of this year, —let me withdraw that question. Mr. Willard, are you employed?
A. I work for a farmer, Adam Poff.
Q. How long have you worked for him?
A. I've worked off and on for around twenty years.
Q. Were you employed for him during the month of July this year?
A. Yes sir.
Q. Are you still employed with him?
A. Yes sir.
Q. What are your hours of work?
A. Anywhere from six in the morning until around eight o'clock at night.
Q. Mr. Willard, directing your attention to the July 29th of this year, I'll ask you whether or not you went to work that day?
A. I went to work.
Q. Do you know what time that you left to go to work?
[Tr. 126] A. Around six o'clock.
Q. Did you have breakfast before you went to work sir?
A. I had breakfast.
Q. When did you have breakfast?
A. Well it was about a quarter of six when my wife and I sat down for breakfast.
Q. Did your wife eat breakfast with you?
A. Yes sir.
Q. Do you know what you had for breakfast?
A. Yes sir. I had corn flakes, and she most always ate bran or all-bran or shredded wheat and stuff like that.
Q. Did she have breakfast food that morning for breakfast?

A. She had breakfast food that morning, yes sir.
Q. And you say you ate breakfast about a quarter to six?
A. Yes sir.
Q. And she had breakfast with you?
A. Yes sir.
Q. Did anyone else eat breakfast with you?
A. No sir.
Q. Was anyone else staying at the house at this time?
A. My oldest son.
Q. What is his name?
[Tr. 127] A. Jack Willard.
Q. Was he up at this time?
A. No sir.
Q. I mean had he arisen at this time?
A. He gets up around—about ten minutes after six.
Q. When did you leave for work that morning, Mr. Willard?
A. Around six o'clock.
Q. About six o'clock. About how far do you have to go to go to work?
A. Around a mile.
Q. How do you go?
A. Go by car.
Q. Is it your car? Do you drive?
A. I've got two cars, yes sir.
Q. Does anyone go with you?
A. No sir.
Q. On the morning of July 29th, when you got to work approximately what time would you say?
A. I would say around six o'clock.
Q. How long would it take you to go out there?
A. About three minutes.
Q. Where is this in relation to your home?
A. In relation to my home, you mean Adam Poff's.
Q. Yes. Where is this place that you work?
[Tr. 128] A. Well, you go north of town and it's the first green house to the left-hand side.
Q. Now, Mr. Willard, when did you return home that day?
A. I returned home around two o'clock.
Q. Two o'clock when?
A. In the afternoon.

Q. In the afternoon. Why did you return home at that time?

A. Because my wife's sister called me.

Q. Your wife's sister, and who would that be?

A. Genevieve—Genevieve Anderson, but her husband's dead.

Q. Genevieve Anderson, your wife's sister called you, and do you know why she called you?

A. Yes sir.

Q. Why?

A. She called me. She said my wife was missing.

Q. Is that why you went home?

A. That's why I went home.

Q. Did you notify your employer?

A. Did I what?

Q. Did you notify your employer?

A. I did. We were working. We were combining oats and we broke a stick on the reel, and we were fixing that, [Tr. 129] and Adam Poff's wife and daughter came up and got me in her car.

Q. And you came home?

A. I came down to Adam's home place, and I took my car and came on in.

Q. You came down to Adam's home place. Where had you been combining?

A. On Adam's home place, on his home place on his farm. We were combining oats back there.

Q. Approximately what time would you say it was when you arrived at your home?

A. Pretty close to two o'clock.

Q. Pretty close to two o'clock, and what did you do?

A. I went back and hunted all on this side of the railroad, and so I came all through back there, and I was all in and I came back up to the house and said to my youngest son's wife, I said, "Call the Emergency Squad."

Q. You said to the youngest son's wife. Who was she? Do you know her name?

A. Oh——

Q. Would it be Lula?

A. Lula is right.

Q. Lula Willard?

A. Lula Willard.

Q. Was anyone else hunting for her?

[Tr. 130] A. Yes.

Q. When you got home?

A. My wife's sisters and two husbands—two of them, Mary and Aurilla and their husbands were back hunting.

Q. And you joined them?

A. I joined them.

Q. How long did you continue to hunt for her?

A. I suppose for around three-quarters of an hour.

Q. Then what did you do?

A. I came back up to the house. I walked back up to the house, and I told Lula, I said, "You call the Emergency Squad." And she did.

Q. Did the Emergency Squad come?

A. It did.

Q. How soon?

A. I suppose about twenty minutes.

Q. What was done after the Emergency Squad came?

A. They went back and they hunted. Well, first Elwood came in, and he said, "Mr. Willard, you sure——

Mr. Supman: Object to statements of Mr. Phillips.

The Court: Objection sustained.

Mr. Morehart: You won't be able to tell us what somebody else told you, just what you did, what was done that you know of.

A. We went in the house, and we searched the house [Tr. 131] all over, and we came back out then. And so they talked to me awhile, the Emergency Squad, and they said they'd go down and then they got another bunch and they went down.

Q. Now went down, went where?

A. Went down over and across and hunted clear back over to the other road.

Q. When you say that they went down, where do you mean?

A. They went north of my house where I live down over across to where the Fairfield Paper Company uses for a dump.

Mr. Morehart: Yes?

A. And crossed back over across the railroad and all up through Motz's and down through, clear through to the other road.

Q. Why did they go back through there?

A. They were hunting for my wife.

Q. I know that sir, but why would they search this locale?
A. They thought maybe she went back to pick berries.
Q. Are there a bunch of blackberry bushes there?
A. Yes. She went back there quite often.
Q. To pick blackberries?
A. Yes sir.
Q. That's where they were looking for her?
[Tr. 132] A. Yes sir.
Q. Did they find her?
A. No sir.
Q. How long did they search?
A. I suppose they searched up till around 7:30.
Q. In the evening?
A. In the evening.
Q. Was it beginning to get dusk at that time?
A. Dusk, that's right.
Q. What did you do after that, Mr. Willard?
A. I stayed at the house, around the house.
Q. Let me ask you, first, I think, you made the statement that when the Emergency Squad came that you searched the house, is that right?
A. That's right.
Q. When you say "the house", what house do you have reference to?
A. The house where I live in.
Q. Your home?
A. Yes.
Q. After approximately 7:30 in the evening, you say, when the search was discontinued, what if anything was done then, if you know of sir?
A. I was sitting over at Barbers' yard——
Q. Now where is Barbers' yard?
[Tr. 133] A. Right across the street from me.
Q. From you. Okay.
A. And so my son who lives in Lancaster, Robert, and his wife came over and she says——
Mr. Morehart: Now, they won't let you say what she said. You can tell us what you did or what was done, but——
A. Well, I was sitting in Barbers' yard, and so—I was sitting over there in the yard, so Mr. Barber was with me and Mrs. Barber was with me.

Q. Do you know whether or not your wife was found that evening sir?

A. She was found across in the Whittington home.

Q. Where is that in reference to your home?

A. It's catty-cornered across the left from where I live.

Q. Across the street at an angle?

A. At an angle.

Q. From where you live?

A. Yes sir.

Q. Your home is on what side of the street?

A. On the right hand side of the street.

Q. I know, but on which direction, east or west?

A. East.

Q. East side of the street, and the Barbers' home is where?

[Tr. 134] A. The west.

Q. On the west side directly across. Now where is the Whittington home in reference to the Barbers' home?

A. Just right south.

Q. Right south, and it would be on the west side of the street also, is that correct?

A. Yes.

Q. Were you in the Whittington home that evening?

A. No sir.

Q. You did not see your wife that evening?

A. Only time I saw her was when they carried her out and put her in the ambulance.

Q. Did you see her at that time?

A. No sir.

Q. You didn't see her?

A. No sir. They had her covered.

Q. I see. Mr. Willard, when you left for work that morning, did your wife appear to be in good health?

A. Good health.

Q. I mean, was there anything wrong that you noticed, anything out of the ordinary, anything at all that you noticed?

A. Nothing wrong.

Q. Do you know what day of the week this was?

A. Day of the week this is? This is the second.

[Tr. 135] Q. No, no. No, no. That this occurred sir. Do you know what day this was?

A. 26th of July, wasn't it?

Q. No, I think not, but what I'm thinking of, do you know whether or not it was Monday, Tuesday, Wednesday, Thursday, Friday or Saturday?

A. It was on Friday.

Q. On a Friday. To your knowledge, does your wife have a routine that she follows on Fridays?

A. Yes sir.

Q. What is it?

A. Goes to town, to Lancaster, always does. Gets groceries for her mother and gets groceries down here at Lancaster for her aunt.

Q. She goes to town every Friday?

A. Every Friday.

Q. Do you know whether or not she had plans to go shopping this Friday, the Friday that she was missing?

A. She was supposed to go up home and take her sister.

Q. She was to go get her sister?

A. Yes sir.

Q. Which sister?

A. Genevieve, the one who's at home.

Q. Genevieve?

A. The one who is at home living with her mother.

[Tr. 136] Q. Do you know when she was to go get her?

A. Ten o'clock.

Q. Ten o'clock. Does your wife drive?

A. Yes sir.

Q. What kind of car does she drive?

A. She was driving a Pontiac, a '56 Pontiac, blue.

Q. A blue '56 Pontiac. Do you know where it was parked?

A. In the driveway.

Q. On the morning that you left, that is, I believe, the 29th of July, was it parked in the driveway?

A. Yes, parked in the driveway.

Q. Which side of the house is this driveway?

A. South.

Q. South side of the house?

A. Yes.

Mr. Morehart: You may cross examine.

Cross-examination.

By Mr. Kistler:

Q. Mr. Willard, what is your age?

A. Sixty-three.

Q. What was the age of your wife on July 29th, 1966?

A. Sixty-three.

Q. When you left the home in the morning, who was in the home with your wife?

[Tr. 137] A. Just my oldest son.

Q. No one else?

A. No sir.

Q. Was there a relative from Florida visiting with your family?

A. She's a visitor.

Q. And where was that relative?

A. She and her husband was up to her mother's.

Q. Now I believe you said you told your younger son to call the Emergency Squad, or words to that effect?

A. No. My youngest son's wife, Lula, called the Emergency Squad. I told her when I come back from hunting down there, I told her to call the Emergency Squad, and she did.

Q. Mr. Willard, at any time immediately prior to this date, had your wife threatened to commit suicide?

A. No sir. My wife wouldn't do that.

Q. Mr. Willard, did you and your wife have a quarrel on the morning of July 29th, 1966?

A. No sir.

Q. Had you been quarreling with her?

A. No sir.

Q. I'll ask you if you and your wife had—strike that. I'll ask you if your wife had threatened to separate from you and leave you?

[Tr. 138] A. No sir.

Q. On the morning in question, July 29th, 1966, did she have her clothes packed?

A. No sir.

Q. Did she have any of her clothes packed?

A. No sir.

Q. I'll ask you if on this particular morning, if you and your wife did not have a quarrel before you left the home?

A. No sir. No sir.

Q. And I'll ask you if in mornings and evenings immediately prior to July the 28th, or the week before that, July 29th——

A. No sir.

Q. —if you and your wife had not had loud arguments in your home?

A. No. Well, we had little arguments just like anybody else, but we didn't have no loud arguments.

Q. Did you have arguments?

A. No, not then.

Q. None at all?

A. No sir.

Q. You're saying that under oath, Mr. Willard?

A. Yes sir, I'm saying that under oath.

Q. Would you have had arguments such as could have [Tr. 139] been heard by the neighbors in the locality?

A. Well, I don't know. We've had little arguments maybe when it comes to that, but not anything—I loved that woman, and I wouldn't touch that woman.

Q. Mr. Willard, what type of work did you do for Mr. Poff?

A. I worked on the farm, made hay, and plowed, and planted corn, and whatever you're supposed to do on the farm.

Q. Did your work for your employer require you to leave these premises?

A. No.

Q. Mr. Willard, on 8-16—at 8:16 o'clock a.m. on the morning of July 29th, 1966, did you drive your car to your home?

A. Did I drive my car to my home?

Q. Your car?

A. Yes.

Q. All right. What were you doing there at your home at 8:16 on the morning of July 29th, 1966?

A. I drove over. Adam Poff told me to go over and check some sweetcorn over to Millersport, and that was between twelve and twelve-thirty when I went over there.

Q. I'm talking about 8:16 in the morning. What did you drive your car to your residence for? For what reason? [Tr. 140] To your residence?

A. My residence?

Q. Your residence?

A. I don't know, what I mean, if I was home at my residence at that date because I could not tell you if I was over home.

Q. Mr. Willard, on the 29th day of July, 1966, was your wife the owner of a little dog?

A. My wife, the owner of a little dog, no sir.

Q. Was there a dog on the premises?

A. There was a dog on the premises, but he belongs to Jack Willard, my son.

Q. I'll ask you if on July 29th and in the few days preceding that date, if that little dog went with Mrs. Willard wherever she went?

A. Yes sir, when she'd let it loose, what I mean, when she'd go down to pick berries that dog was following her.

Q. All right sir. Then you came back you said to your home on the 29th at two o'clock in the afternoon?

A. Yes sir.

Q. You testified to that a moment ago?

A. Yes sir.

Q. Did you see the little dog?

A. No sir.

[Tr. 141] Q. You didn't?

A. No sir.

Q. You knew where the dog was, didn't you?

A. In the garage.

Q. Where was it?

A. In the garage. That's where we keep it most of the time.

Q. To refresh your memory, Mr. Willard, wasn't that dog tied up over at Bondurants?

A. Not that I know anything. It was loose and I don't know who got it and brought it over. I couldn't tell you who brought the dog over.

Q. All right. Where was the dog when you came back this occasion you said at two o'clock in the afternoon?

A. It was in the garage.

Q. It was in the garage?

A. Yes sir.

Q. Was it tied?

A. No sir. We just leave it loose in there.

Q. Was it confined?

A. No sir.

Q. Where is the Bondurant's residence?

A. It is down the next street below my place, the one that runs pass the ball field, and it's the second house to the west.

[Tr. 142] Q. Do you know of your own knowledge, if on the morning of July 29th, 1966, that that dog was tied in the Bondurant yard?

A. I don't know anything about that cause I wasn't there.

Q. Did you see the dog on the morning of July 29th, 1966?

A. No sir.

Q. Do you know where the dog was on the morning of July 29th, 1966, when you left your home?

A. It was in the garage.

Q. Did you see the dog in the garage that morning?

A. No sir.

Q. Beg pardon.

A. No sir, I did not.

Q. Then how did you know it was in the garage?

A. Because I knowed it was in the garage. That's where it is now. I fed it this morning.

Q. What kind of car were you driving on July 29th, 1966?

A. A '52 Dodge. I've got two automobiles.

Q. What color is the Dodge?

A. Green.

Q. Is there on the Dodge any plaque or anything to indicate the type of car that it is?

[Tr. 143] A. Yes. It was a '52 Dodge.

Q. I mean, on July 29th, 1966, was there any marking of—any insignia to show that it was a Dodge automobile?

A. Yes, it's got an emblem on the front end, "Dodge".

Q. Where is that sir?

A. On the front end.

Q. On the front end?

A. Yes.

Q. Does it say Dodge?

A. Yes sir.

Q. You mean on the front part of the radiator, or the hood, whatever it is?

A. Yes sir.

Q. Are you positive that there is some identifying marking of "Dodge" on the front of your car——

A. Yes sir.

Q. —or are you positive there was on July 29th, 1966?

A. Yes sir.

Mr. Kistler: I believe that's all.

Redirect examination.

By Mr. Morehart:

Q. I want to clarify something. Mr. Willard, on the morning of July 29th, that is the day your wife came up missing,——.

A. Yes sir.

[Tr. 144] Q. —I believe, you stated that you left your home around six o'clock in the morning, is that correct?

A. That's right.

Q. Now then, were you ever back at your home that day——

A. No sir.

Q. —from the time you left, up until two o'clock in the afternoon?

A. No sir, I was not.

Q. Were you away from the Adam Poff farm where you went to work from the time that you arrived there in the morning, you say, around six or a few minutes after, until noon?

A. In the afternoon, Adam told me to go over and check some sweetcorn over at Mrs. Bright's, that's Mary Kate's mother, and I went over there between twelve and twelve-thirty and come back from there and went up to the home-place and I was cleaning up in the yard when he come up.

Q. Now, tell me this. Were you away from the Adam Poff place from the time that you arrived there in the morning, this is on July 29th, the day your wife was missing, were you away from the home, I mean from the Poff place where you were working, up until the time that you went to check the sweetcorn about twelve or twelve-thirty?

[Tr. 145] A. No sir, I was not.

Q. You were not away?

A. No sir.

Q. I think you stated on cross examination, Mr. Willard, that—you may have become confused or something. They asked you whether or not you were back at your home around 8:16 in the morning.

A. No, I wasn't back at my home from six o'clock until

noon. And I wasn't back there until six o'clock up till two o'clock till my wife's sister called me.

Q. You were not back at your home at any time?

A. No sir. I wasn't back at my home.

Mr. Morehart: I think that's all.

Recross-examination.

By Mr. Kistler:

Q. Mr. Willard, the night before July 29th, 1966, was your wife over to the Whittington home?

A. Now, I couldn't tell you. She told me she was going. I couldn't say she went over there. I couldn't say that.

Q. All right. To refresh your memory, did not your wife go to the Whittington home to have Mrs. Whittington put up her hair?

A. Well she said she was going. I couldn't say that she went. I couldn't say that.

[Tr. 146] Q. Well, did Mrs. Willard have her hair fixed on the night of July 28th, 1966?

A. I guess she did. I don't know, what I mean, whether she went over there or not. I couldn't say that.

Q. Were you at home the night previous?

A. I was out to Adam Poff's.

Q. Beg pardon.

A. I was out to Adam Poff's.

Q. Didn't you come home for your evening meal on July 28th, 1966?

A. I come home in the evening. I don't get home until around eight o'clock, maybe a little later.

Q. Did you see your wife when she went to bed that evening?

A. Yes sir.

Q. July 28th?

A. Yes sir.

Q. All right. Had she had her hair done?

A. Well, I couldn't tell you. I didn't pay that much attention because she had a hairnet on her hair.

Q. Now on the morning of July 29th, 1966, did you eat breakfast with her?

A. Yes sir.

Q. Had her hair been recently combed or put up?

A. She had her net over it. When it comes to that, [Tr. 147] I know that because I kissed her that morning before I left.

Q. Mr. Willard, you are acquainted with Buddy Whittington?

A. Yes sir.

Q. Had he ever visited in your home?

A. He's come over there. What I mean, he's come to the door, as far as the door, but I don't know if he's come in when I wasn't there or not. I couldn't say that.

Q. Did your wife visit in the Whittington home?

A. She was over there.

Q. Was your wife and the Whittingtons close friends?

A. I guess they was.

Q. Was your wife a good friend of Buddy Whittington?

A. Yes sir.

Q. Were the Whittingtons friends of yours?

A. Yes.

Q. Did your wife to your knowledge give Buddy a dollar for his birthday, the birthday being July 23rd?

A. I couldn't say that. I didn't hear her say that. I could not tell you that.

Q. But the relationship between Buddy and the Whittingtons and you and your wife had always been very close, hadn't it?

A. I waved at them when I went back and forth, out and in, but I never went over a whole lot, over to the [Tr. 148] Whittingtons. My wife has, I guess, but I never.

Q. On July 29th, 1966, was your son living with you in your home?

A. Yes sir.

Q. Was he separated from his wife?

A. Yes sir.

Q. What was the relationship between your son and your wife?

A. All right.

Q. Did they quarrel?

A. No sir.

Q. Now, Mr. Willard, you testified awhile ago on direct or on cross to begin with, that at 8:16 you did drive your car back to your home?

A. Well, I don't—I may have said something there I

shouldn't. I don't know. I come back in home every once in awhile, but I don't know if that was the date or what, but I was in yesterday at noon, in home.

Q. Mr. Willard, isn't it possible that you did drive your car back to your home——

A. I wouldn't say.

Q. —at 8:16?

A. I wouldn't say.

The Court: When you talk about—Let's make it clear what this 8:16 is. Is that the 16th day of August, [Tr. 149] is that what you mean or what?

Mr. Kistler: No, at 8:16 o'clock a.m. on July 29th, 1966, did you drive your car back to your home?

A. I could not tell you if I drove back or not.

Q. Beg pardon.

A. I could not tell you if I drove back home or not. I come in every once in awhile, in back home, and I tell Adam I'm coming to town.

Mr. Kistler: That's all.

Redirect examination.

By Mr. Morehart:

Q. Mr. Willard, I think we've got to clear this up. On the day your wife was missing, do you know whether or not you came back to the home that day?

A. I didn't come back home that day.

Q. And if that was the 29th day of July, then you were not back home?

A. I was not back home.

Mr. Morehart: I think that he's misunderstanding, your Honor.

Mr. Kistler: Are you finished with——

Mr. Morehart: Yes, I'm finished.

Recross-examination.

By Mr. Kistler:

Q. Mr. Willard, a moment ago, the first time you [Tr. 150] said you did and then you just now told me you couldn't say.

A. I wasn't back home there that day.

Q. Let's ask you again. On July 29th, 1966, at 8:16 o'clock a.m., did you not drive your car to your home?

A. I didn't drive my car that day home. I drove my car back when my wife's sister called out to Poff's and I drove back home around two o'clock.

Q. I'm not talking about two o'clock. I'm talking about 8:16 o'clock a.m.——

A. No.

Q. —as I was previously——

A. No.

Q. —when I asked you the first time.

A. No, I didn't drive back home.

Q. Where did you drive your car at 8:16 o'clock a.m. on the morning of July 29th, 1966?

A. I drove it out to Adam Poff's.

Q. I believe you testified in the first instance that you drove out to Adam Poff's at six o'clock that morning?

A. I drove out to Adam Poff's six o'clock that morning. I didn't drive it out, what I mean, through the day. I was out there up until two o'clock and my wife's sister called me and said your wife's missing, and she brought me back to Adam's home-place, and I got in my car and drove it home.

[Tr. 151] Q. Yes, I understand you said that when Mr. Morehart questioned you a moment ago. What size farm is the Poff farm?

A. Well, he's got seventy some acres up to his home-place.

Q. Where do you park your car at the Poff farm?

A. I usually park it over to the north or park it over next to the garage.

Q. Did you see your car at all times after you drove it there?

A. Seen it? Well, I seen it, what I mean, when I was there, and we were up to the other place working up there and when we came down at noon, we very seldom come down until noon, we eat our dinner. It was out there all the time until I was called.

Q. And if anyone drove your car to your home at about 8:16 o'clock a.m. on the morning of July 29th, 1966, it would have had to be you, would it not?

A. I didn't drive it.

Q. Beg pardon.
A. I didn't drive it in the morning.
Q. Did you loan it to anybody else?
A. No sir.
Q. Would you have the keys to the car?
A. Keys were in the car.

[Tr. 152] Q. Now, Mr. Willard, is your recollection of what happened on July 29th, 1966, rather hazy in your mind now?
A. No sir.
Q. Could it be that you drove your car at 8:16 o'clock a.m. on the morning of July 29th, 1966, to your home——
A. No sir.
Q. —or in the close vicinity of your home?
A. No sir.
Q. Why did you say so awhile ago when I first asked you that?
A. Well, I didn't understand your question.
Q. What was it?
A. I didn't understand the question, but I wasn't in all forenoon.
Q. Did you see your wife at or about 8:16 o'clock a.m. on July 29th, 1966?
A. No sir.
Q. Did you see the dog at that time?
A. No sir.
Q. What did you and your wife quarrel about in the last few months, Mr. Willard?
A. We didn't quarrel.

Mr. Morehart: I object.
The Court: Objection sustained.

[Tr. 153] A. We didn't quarrel about nothing.
Mr. Kistler: What did you and your wife quarrel about in the last week prior to July 29th?
A. We didn't even quarrel.
Q. Never did?
A. Oh, we had a few little arguments, not quarreling.
Q. Now what were the arguments about?

Mr. Morehart: I object, your Honor.
The Court: Objection sustained.
Mr. Kistler: Did you go on any mission of any kind for your employer in your car on or about 8:16 o'clock a.m.——

A. No sir.

Q. —on the morning of July 29th, 1966?

A. No sir.

Q. Who were you working with that morning at approximately between six and eight o'clock in the morning, the 29th?

A. I work with Adam Poff.

Q. Anyone else besides Adam Poff?

A. Jerry Searles was out there.

Q. Where you were working?

A. We were working up at the other farm.

Q. Where is the other farm?

A. It's up north of Baltimore.

Q. How did you go——

[Tr. 154] A. It's——

Q. How did you——

A. It's——

Q. Excuse me.

A. It's on 64.

Q. How did you go to the other farm on that morning?

A. Adam in the pick-up.

Q. Who went with you to the other farm?

A. I and Adam.

Q. Mr. Willard, did you know on July 29th, 1966, that Buddy Whittington's parents, Mr. and Mrs. Whittington, were going to be out of town?

A. Well, they said—they were down to my brother's funeral, and they said they were going to leave the next morning. They were down to the funeral home, down there to see my brother. My brother was laying there, what I mean, laying there dead.

Q. Did you see the Whittingtons leave their home on July 29th, 1966?

A. No sir.

The Court: Please talk a little bit more distinct, Mr. Willard. You're holding your hand in front of your mouth, and it's a little bit difficult here with the acoustical conditions to hear you.

Mr. Kistler: When you left your home at six o'clock [Tr. 155] a.m. on July 29th, 1966, was the Whittington car in the garage?

A. I don't know.

Q. Did you see the Whittington car?
A. No sir.
Q. Did you go by the Whittington home?
A. No sir.
Q. Which way did you go to work?
A. I backed out, and I went north and made the jog and went over and hit Oak Street and from there on out.
Q. Mr. Willard, you've known Buddy Whittington all his life, have you not?
A. Well——
Q. Known him for a good while?
A. Known him for a good while.
Q. Has he always been a good boy, to your knowledge?

Mr. Morehart: Object your Honor. I don't think that has anything to do with this.

The Court: I don't think it has either. Objection sustained.

Mr. Kistler: You ever have any trouble of any kind with Buddy Whittington years ago?
A. No sir.
Q. Did your wife ever have any trouble with him?
A. I couldn't tell you that. She never said anything [Tr. 156] about it.

Mr. Kistler: That's all. Nothing further.

(Witness excused)

Dr. L. L. Kersell, being first duly sworn, as provided by law, was examined and testified as follows:

Direct examination.

By Mr. Morehart:

Q. Will you state your name?
A. Dr. Lloyd Kersell.
Q. Where do you live sir?
A. 130 Union Street, Lancaster.
Q. You are a doctor of medicine?
A. Yes.
Q. How long have you been a doctor of medicine?

A. Since 1925.

Q. You have practiced medicine since that time, doctor?

A. I have.

Q. You are the coroner of this county?

A. I am.

Q. How long have you been the coroner of this county?

A. Approximately five, six years, between five and six years.

[Tr. 157] Q. Now doctor, did you—directing your attention to the 29th day of July of this year, did you have occasion in your official capacity as coroner to be called to the Village of Baltimore?

A. I did.

Q. Where did you go in Baltimore?

A. I do not have the address. I went to a home near the school in Baltimore. I was directed that way.

Q. Why were you called there?

A. I received a call from the Sheriff's Office saying that Chief Phillips said that he had a case that he wanted the coroner called on.

Q. What did you observe when you got there?

A. When I reached the Village, I didn't know just where the place was. I drove around the square and then I noticed a lot of automobiles on this street——

Court Reporter: Just a minute please.

(Recess to change tape)

Mr. Morehart: I'm not just exactly sure where we left off, doctor, but I think I had asked you what you found when you arrived at this home in Baltimore, I believe.

A. I think I left you in the street. I was able to find a place to park eventually, and was conducted into the home by Chief Phillips, and I asked him why I had been called and what was the story, and he said to me——

[Tr. 158] Mr. Kistler: Object to any statements.

Mr. Morehart: Doctor, you can't tell what apparently someone else said so you just tell what you observed and what you found and what you did.

A. There was a body of a woman underneath a bed. The head of the woman was toward the foot of the bed. We discussed briefly what we should do, and it was the opinion

of all of it would be best if we removed the bed clothing, the mattress and springs, bed slats, so that we not disturb the body and——

Q. Did you examine the body before this was done, doctor?

A. I looked under the bed, but you could see very little except to see there was a woman there. But you could see very little.

Q. Could you observe whether she was alive or dead?

A. She was dead.

Q. I mean, you could observe that all right?

A. Yes.

Q. All right then, tell us what you did please, if you will please.

A. The men did remove the bedclothes, the mattress, springs, and slats, and I proceeded to examine the body. Of course, first of all, we took—some pictures were made of the body so that we would have a record of the body [Tr. 159] before I touched the body.

Q. Doctor, I would like to hand you some photographs which for purpose of identification have been marked State's Exhibits 1, 2, 3 and 4. Would you examine those please? Are the pictures marked 1, 2, and 3—State's Exhibits 1, 2, and 3, the pictures of the woman, is that the woman you're talking about?

A. Yes, that is the body of the woman.

Q. And State's Exhibit 4, which is a picture of, I believe, of the bed and was that the condition of the bed when you arrived there, doctor?

A. Yes.

Q. Or at least approximately so?

A. Yes.

Q. All right. Now, I believe you stated that you then removed the bed clothing and the springs and mattress, is that correct?

A. The men in the room did that.

Q. They did that for you, and you made an examination of the body, is that correct?

A. Yes.

Q. Do you know whose body this was, doctor?

A. I was told by Chief Phillips it was the body of a Mrs. Willard.

Q. That's the same body shown in those photographs? [Tr. 160] A. Yes.

Q. All right. What were your findings as far as your examination of the body, sir?

A. I examined the body, and I found that the—most of the body heat had been lost from the body. The arms were cold, and the torso still had some heat, but there had been considerable loss of heat. Post-mortem rigidity was complete. Post-mortem lividity was quite marked.

Q. When you talk about post-mortem lividity what do you have reference to, doctor? I'm sure that everybody wouldn't understand.

A. After death the superficial subcutaneous blood vessels relax and dilate. The blood that is in the body seeks a level and settles to the dependent portion. In the case of a woman like this lying on her back, this blood is on the back and on the sides, and this process was complete because there was a marked line of demarcation between the area of the skin in which the dilated blood vessels were and the skin that had no dilated blood vessels.

Q. Doctor, does that appear, does that show up on either of those photographs?

A. Yes. It shows here very well.

Q. Would you point out to the Court please just exactly what you're talking about so the Court will have some idea. [Tr. 161] A. The post-mortem lividity that you see along the back and, of course, as we contrast the normal skin on the anterior surface of the body.

Q. Now what, if anything unusual, did you observe about the body, doctor?

A. I noted that from my estimation of these factors, the loss of blood and the rigidity, or the post-mortem rigidity, and the post-mortem lividity, the completeness of it, and I estimated the time of death as approximately twelve hours. Now that means it is near twelve hours, but there would be a leeway of an hour each way, approximately more if it were longer. I noted that there were some marks on the woman's neck, and I drew the attention of the officer, Officer Phillips, to those and the condition that I saw on the neck, and I had him make—I had the photographer make photographs of these.

Q. Doctor, what time did you examine the body, do you know approximately?

A. It was approximately a quarter till nine.

Q. And you are estimating then, in your opinion, based on what you saw there in your examination, that this body had been dead approximately twelve hours prior to that time, is that correct?

A. I would say twelve hours approximately, but eleven hours or over.

[Tr. 162] Q. Now doctor, can you tell us approximately, based upon your examination, approximately how long she had been in this position that you found the body, on her back?

A. That number of hours.

Q. That number of hours?

A. Yes.

Q. In other words, she had been in that position on her back approximately, you say, roughly twelve hours prior to that?

A. Roughly twelve hours. Approximately twelve hours.

Q. And not only been in that position that long but had been dead for that period of time, is that correct?

A. That's true.

Q. Now doctor, did you, in your capacity as coroner, sir, did you establish the cause of death of this woman?

A. At this time, I was quite confident as to the cause of death, but inasmuch as this would have to be—certain things would have to be proved by post-mortem examination, I made no statement to anyone except to Officer Phillips. He did say to me——

Q. What was your tentative diagnosis, I mean in your own mind, doctor?

A. Homicide by strangulation. The assailant was behind the woman as he strangled her.

Q. What if anything did you do to confirm this? Did [Tr. 163] you have an autopsy performed?

A. I ordered an autopsy performed by University Hospital.

Q. What were their findings of autopsy as to the cause of death?

A. The autopsy confirmed the cause of death was asphyxiation due to strangulation.

Q. This strangulation occurred where?

A. At this, I presume, at this home.

Q. No, no, no, no. I mean on the body.
A. Strangulation of the neck, manual strangulation.
Q. Of the neck?
A. Yes sir.

Mr. Supman: We move that other remark be stricken from the record.

The Court: What other remark are you talking about?

Mr. Supman: "Presume in the home".

The Court: That will be stricken.

Mr. Morehart: Did you observe anything else unusual about the body, sir? How was it clothed?

A. I noted that the body, the slip and the dress were pulled up exposing the abdomen. I noticed that her undergarments, panties, I guess they call them, were pulled down in front, and when we turned the body over, they were pulled down some in the back. There were also a [Tr. 164] few more marks on the woman, I haven't called your attention to.

Q. You tell us sir.

A. There were some marks which—small scratch marks on her hands and——

Q. What hand, do you know?

A. I cannot recall that sir.

Q. Okay. What kind of marks were they? When you say "scratch marks", would you try to describe them for us please?

A. They were linear marks about a quarter inch or slightly more in length.

Q. Did they look like they had been cut or caused from——

Mr. Kistler: Object. Leading question.

The Court: Well, he can describe them.

A. I cannot testify as to what caused them.

Mr. Morehart: No, no. But I mean what would have—how would these marks that you saw normally be caused, can you tell us that? What would cause these kinds of marks?

Mr. Kistler: Object.

Mr. Morehart: What could cause these kind of marks?

The Court: What could cause them, I think, is a proper question.

A. External violence. Something sharp pushing [Tr. 165] against the skin.

Mr. Kistler: Ask the answer be stricken.

The Court: Overruled.

Mr. Morehart: Did you notice anything else about the body?

A. The shoes were off the body. They were lying as shown in the photograph. The woman's glasses were—and her hair net were off the body. They were lying underneath and to the side. Her lower denture was out and to the right of the head on the floor.

Q. Did you notice any bleeding?

A. There was a slight amount of blood from the right side of the mouth, very slight, coming down on the face.

Q. Doctor, did that blood have the appearance of having come from the lungs or anything like that?

A. No, I cannot testify to that. All I can tell you is that there was blood.

Q. Anything else that you observed, doctor?

A. The clothing of the woman was—the way the body was lying I wondered how the woman had gotten in this position. The woman was not pushed under the bed. She—The woman's clothing was, if she had been pushed under the bed, it would have been drawn to the side. But from the appearance of her clothing and my observation, the bed had been moved and this body had been placed underneath the [Tr. 166] bed and then the bed had been replaced over the body. She could not have been pushed under this bed and her clothing remained in the way that I had seen it.

Mr. Kistler: We object to the answer and ask that it be stricken. It is conjectural and problematical and a conclusion on the part of the pleader and prejudicial.

Mr. Morehart: And may I remind the Court that this is the coroner, and it is his duty to investigate, your Honor.

The Court: Objection overruled.

Mr. Morehart: Doctor, the photographs that you see there, 1, 2, and 3, do they correctly show the body at the time that you first saw it, doctor? I mean, when the bed was removed so the body would be visible?

A. They do.

Q. Now, doctor, would you give us your opinion of how this strangulation that you speak of as having caused the death, how this might have occurred, sir. I mean, whether it was, I think you said something about manual strangulation, or was there any evidence of any instrument, a rope, cord, wire, anything like that, used to cause the strangulation?

A. No, there was no evidence——

Mr. Kistler: Object. It is a leading question.

Mr. Morehart: It is not leading. I've asked——

The Court: Objection overruled.

[Tr. 167] A. From the marks on the woman's neck which I directed the attention of the police officer to, the one which I judged to be a thumb mark and the others on the front of the neck, the marks of finger marks, I assumed that the assailant had been behind the woman as he strangled her, and later this was confirmed by the coroner's report that I received, that the woman had some broken ribs and, from this, I would assume that the woman had been held against some object such as the bed or a dresser, and the assailant had pushed against her as he strangled her, fracturing the ribs and strangling her at this time.

Mr. Kistler: Ask that the answer be stricken if the Court please. It's conjecture on the part of the witness.

The Court: This is the coroner, and he's giving his opinion about it. Overruled.

Mr. Morehart: Doctor, was there any evidence that any instrument of any kind was used in this strangulation?

A. No.

Mr. Morehart: You may cross examine.

Cross-examination.

By Mr. Kistler:

Q. Doctor, while you've been testifying as to what you observed about the body of the decedent, were you testify-

ing from your recollection or from your observation of the photographs that you were holding in your hands [Tr. 168] when you testified?

A. From my personal recollection which is still vivid.

Q. Do these photographs that you have in your hand, and that you did have in your hand while you were testifying, indicate any of the items which you testified to from recollection?

A. The dentures I believe that's this, I'm not sure. The hairnet and glasses, I can't see here. They were under the bed actually. It doesn't show in the photograph, I don't believe. The clothing, of course, which I have told you about shows here, the position of the body on the back. There is a shoe which shows. There's another, I believe.

Q. Do the pictures which are marked State's Exhibits 1, 2, 3, and 4, indicate any marks on the person of the decedent?

A. These photographs that I have here do not show those marks. Those were small and do not show in these pictures. Except, I believe, here's one on the neck which shows in this picture. Yes, because there was one there, and there were some along in here.

Q. Doctor, was any examination made by you to determine if there was any poison or anything of that type in the body of the decedent?

A. This was done at University Hospital by the [Tr. 169] pathologist. There was no poisons or drugs.

Q. Doctor, from your examination of the decedent, Mrs. Willard, would it have been possible for her to have committed suicide?

A. Impossible.

Q. Beg pardon.

A. Impossible.

Q. Why do you say that, doctor?

A. Well, she couldn't have strangled herself. That's impossible to leave these marks. And she couldn't—she wouldn't have broken her ribs on both sides of her chest before committing suicide. To me, it is impossible.

Q. Doctor, when you first came to the Whittington residence, was not the possibility of suicide mentioned to you?

A. No.

Q. Before you left, was not that possibility mentioned to you?

A. I don't recall anyone mentioning suicide to me. I was——

The Court: You're just to respond to the questions, doctor.

Mr. Kistler: You say you don't recall?

A. No, I do not recall.

Q. Doctor, do you know if this body had been [Tr. 170] moved in any way before you were called to the scene?

A. I can—What was that question again please?

Q. Do you know if the body had been moved in any way before you arrived at the location of the body?

A. From the time the body was placed here, you mean?

Q. Yes.

A. No, I cannot testify to that except—No, I cannot testify to that.

Q. Who was there when you arrived at the location that you saw the body?

A. Officer Phillips and a number of men from, I believe, the Fire Chief and there were many people in the street. I don't know who they were.

Q. Doctor——

A. The parents at this home, the man and wife and son were there.

Q. Looking at this, which is marked State's Exhibit 1, is that the way you saw the body when you first came?

A. After the top of the bed was removed. Yes, that is the way that I saw the body.

Q. When you first came, was the body exposed like this with the top part of the bed being away?

A. Yes.

Q. So the bed had been removed when you came?

A. No, I—The body was underneath the bed, and we [Tr. 171] discussed the matter as, that we should remove the bed so that we not disturb the body, so we could examine it without moving it.

Q. Is there any way that you can tell or could you tell from what you observed if the bed could have been in any other position other than what you found it when you came there with the body under it?

A. Well, it was a very small bedroom, and I could see only

one place for the bed with the arrangement of the furniture and that was the place it was, the position it was.

Q. Could the body, in your opinion, have been someplace else other than in the position that you found it at any time after the death occurred?

A. It is quite possible. I do not know where she was killed.

Q. Doctor, could death have occurred more early than the time that you estimated that it did occur?

A. That is true.

Q. How much more early would you say?

A. I would say eleven to sixteen hours or more.

Q. Beg pardon.

A. Eleven to sixteen hours. The length of time after the rigidity is complete and after post-mortem lividity is complete, then there's considerable period that [Tr. 172] matters stay about the same condition. The body, putrefaction in other words, does not start except for some hours.

Q. Doctor, could death have occurred at some other location than where you see the body as shown in State's Exhibit 1?

A. It could.

Q. Also, is there any way to tell, doctor, how long the body had been in the particular location as is indicated in State's Exhibit 1?

A. From the post-mortem lividity, the body had not been moved since it was placed in this position.

Q. Doctor, could the body have been at some other location in this same position and moved over to the location as shown in State's Exhibit 1?

A. That's true.

Mr. Kistler: I believe that's all if the Court please.

Mr. Morehart: I think that's all.

The Court: Let me ask a question. It may be in the record, and I didn't get it. But, at the time of doctor's examination, did he say nine o'clock?

Mr. Morehart: A quarter till nine, I think he said.

Dr. Kersell: Approximately a quarter till nine.

The Court: At night, of the 29th, is that right?

Dr. Kersell: At night.

The Court: That part of it, I'm sorry gentlemen, I [Tr. 173] didn't get.

(Witness excused)

Dr. Francis Edward Cuppage, being first duly sworn, as provided by law, was examined and testified as follows:

Direct examination.

By Mr. Morehart:

Q. Will you state your name please?

A. Francis Edward Cuppage.

Q. And where do you live sir?

A. Columbus, Ohio.

Q. What is your profession or occupation?

A. I'm a physician.

Q. What are your qualifications as a physician?

A. I'm a pathologist. I graduated from Ohio State University Medical School in 1959, took my internship and training at Western Reserve University in Cleveland until 1963, then I took a fellowship in Cleveland in Research and Electrokymography until 1965, and then I joined the staff of Ohio State University in July of 1965, Department of Pathology.

Q. Doctor, did you have occasion to perform an autopsy on a female woman by the name of Gladys Willard on or about the 29th or 30th of August of this year?

[Tr. 174] Q. Or July, excuse me, of July?

A. Yes. May I refer to my notes?

Q. Oh yes, sure you may.

A. We performed an autopsy on Gladys Willard on the 30th day of July, 1966, at approximately nine o'clock in the morning.

Q. Now, doctor——

Mr. Supman: Excuse me. May I ask, what time was that?

A. Nine o'clock.

Mr. Supman: Nine o'clock a.m.

A. A. M.

Mr. Supman: The date, sir, again.

A. July 30th, 1966.

Mr. Morehart: Now, you performed this for whom sir?

A. This was for the coroner of Fairfield County, Dr. Kersell.

Q. And did you determine the cause of death?

A. Yes, we did. We determined the cause of death—The cause of death was asphyxiation due to strangulation.

Q. Now will you tell us please if you will what your autopsy revealed?

A. We found evidence of excoriations on the neck. We found hemorrhage, hematoma within the soft connective tissue of the neck. We found fractures of the hyoid bone, [Tr. 175] a portion of the larynx. In addition, we found hyperemia and dilatation of the blood vessels in the upper portions of the trachea and esophagus. We found evidence of hemorrhage in the scalp, below the scalp, and in the scalp overlying the skull.

Q. Now where was that Doctor?

A. This was over the vertex of the upper portion of the skull.

Q. Could you indicate on your own head where that would be.

A. It would be like so.

Q. How large an area was that?

A. It would be an area of approximately ten centimeters in diameter.

Q. What, Doctor, could cause something like this or would cause something like this?

A. This could be caused by several things. It could be caused by anoxia or lack of oxygen within the blood vascular system. It could be caused by trauma to the area involved.

Q. In your opinion and based upon your examination of this, what would be your best opinion as to what would have caused this?

A. I think in this case, this would more likely be caused by trauma due to the fact that the area was larger than

[Tr. 176] small with little hemorrhages we usually see with lack of oxygen. I think that it would be probable that this is a traumatic related incident.

Mr. Kistler: Object and ask that the statements as to the probabilities be excluded, that part of the answer as to the opinion based on probabilities.

The Court: As I remember, the Doctor said that the condition that he found and in his opinion from those conditions. I think that when he said "probably", he means that predominantly that's caused by, it comes from a certain thing. Objection overruled.

Mr. Morehart: Doctor, would a blow on the head cause something like this?

Mr. Kistler: Objection. It is a leading question, if the Court please.

The Court: That's all right. He's describing this injury.

A. It could.

Mr. Morehart: Would this condition which you have found here be caused by a sharp instrument, a blunt instrument, or what kind of instrument would you think a blow on the head would cause such an injury as this?

A. I think if this were due to a blow on the head, it would be a blunt rather than a sharp instrument.

Q. Was there any wound in the scalp of the head that [Tr. 177] you could observe?

A. We found no wound.

Q. Is that your reason for saying it would probably be a blunt instrument rather than a sharp instrument?

A. Yes.

Q. Very well. What else now did your autopsy reveal?

A. In addition to the changes that I have already noted in the esophagus and trachea in the neck, we found again focal hemorrhages in the area of the peritoneum, on the inside of the peritoneal cavity. Apparently at one time she had a hysterectomy. We found absence of the uterus and the distal portion of the cervix, and, in the area where the uterus is normally housed, we found evidence of hemorrhage in the soft tissues in that area. Examination of the

vaginal secretions revealed only aging cells and no evidence of spermatozoa. We found——

Q. Doctor— Excuse me.

A. We found excoriations on both hands, on the dorsal or upper aspects of both hands, and we found hemorrhage in the medial aspect of the left upper arm area, so approximately five centimeters in diameter.

The Court: May I ask sir so that I understand. You mean in the underneath part of the arm, is that Doctor?

A. Yes, on the underneath and inner aspects of the arm.

[Tr. 178] Mr. Morehart: How much did you say, Doctor, the measurement?

A. Approximately five centimeters.

Q. How long would that be?

A. I'm sorry. We use centimeters. It would be about, maybe four inches or so, maybe a little less.

Q. A hundredth of a meter, is that right?

A. 2.56 centimeters in the inch. Figure it from that.

Q. All right. Now could you tell about this injury to the arm from outside observation of this arm?

A. Only that it was probably related to a blunt injury of some sort, but otherwise I don't think you could do much more with it.

Q. Could you observe it from the arm itself?

A. Yes.

Q. You could. What if any other injuries did you find?

A. We found fractures of the ribs on the left and the right sides. The right third, fourth, and fifth ribs and the left sixth rib were fractured, and there was evidence——

Mr. Kistler: We'll have to object to this witness testifying from typewritten notes.

The Court: He can refresh his memory. You can look at them if you like.

Mr. Kistler: But they aren't in his handwriting.

[Tr. 179] The Court: Are these your notes?

Mr. Morehart: It's his autopsy.

The Court: He's talking about his notes. Do you object? It's overruled if you do. Proceed Doctor.

A. These—surrounding these areas of fracture were hemorrhages into the soft tissue.

Mr. Morehart: That means what?

A. It means—It is evident to us then that this hemorrhage, or fracture or trauma occurred before the patient had actually stopped the heartbeat.

Q. I see. Before she had died?

A. That's correct.

Q. That the injury occurred before?

A. Yes.

Q. All right. Anything else, Doctor?

A. We found a few incidental findings, a hypernephroma, which is a neoplasma or tumor of the right, or correction, of the left kidney, and a small tumor of the right kidney. I think this was essentially all we found. We found some evidence of arteriosclerosis.

Q. In your opinion, would those have any effect upon her death?

A. No.

Q. Doctor, I notice that you, from your autopsy report, you show hyperemia of the larynx and of the trachea, [Tr. 180] I believe you testified to this. For the purpose of the Court, I don't know, but would you tell the Court what that means.

A. The presence of dilatation of the blood vessels above a point of constriction leads us to think that there definitely was a point of constriction. Now by hyperemia or dilatation of the blood vessels, I mean that the blood flow back to the heart from the head was obstructed by a constricting change in that area. So, if one were to constrict the blood vessels, this would stop the flow of blood back to the heart. The flow of blood on the opposite side of the constriction would be limited, and the blood would pool in the area, unable to be drained back into the heart. This is evidence to us that this is a constricting type of injury, which we feel is that form of strangulation. In other words, constriction of the areas of the neck which would stop the blood flow back into the heart and dilate the blood vessels in the neck and in the head.

Q. In other words, blood coming from the heart would force a dilatation of the blood vessels up to a point where it is constricted, is that right?

A. Well, the blood—It is much more difficult to obstruct or constrict the blood flow into the head so that usually continues, those are the arteries, and one usually does not constrict those. But in the type of constriction [Tr. 181] that we're referring to, the obstruction to the flow of blood back to the heart, this is much easier to constrict. And blood flows into the brain and the head, but it is unable to get back through the neck into the chest and into the heart.

Q. That's what causes the condition which you call hyperemia? Is that right?

A. That's correct.

Q. Doctor, did you observe any wounds around the neck?

A. There were two or three small excoriations approximately, oh maybe, three-quarters of an inch in length on the anterior aspect of the neck, mainly on the right, but I think there was one small one on the left side. This was the only other thing.

Q. In your opinion, Doctor, and based upon your examination, how would this strangulation have been caused?

A. I think in this instance, the strangulation would much more likely be caused by either a soft instrument, or a piece of material, or by the hands, rather than the ligature type of strangulation which we so commonly see and which would be a belt, or a rope, or a chain, which almost invariably leaves marks upon the neck. We found no evidence of constricting marks from a belt, a rope, or a chain type of material. It would be my opinion that this [Tr. 182] would be more likely, probably either a soft material or the hands or perhaps the forearm.

Q. I see. Doctor, did you have occasion to examine the contents of the stomach of this woman?

A. Yes, we did. There were approximately 50 cc's or a little over an ounce of partially digested food within the lumen or the hole in the stomach. This material consisted of almost completely digested vegetable fibers, with no evidence of meat, and other partially digested fluid content.

Q. Doctor, do you have an opinion as to how long it had been, based on your examination, how long it had been before this food had been eaten?

A. I would think that this would place it in a time span from one and a half to three hours following the ingestion of the food.

The Court: Did I understand that that condition of the food would—Go ahead. Maybe you're getting to what I want to know.

Mr. Morehart: Can you tell us, Doctor, approximately how long that food had been eaten prior to the death of this woman?

A. I think by examination of the material and seeing or attempting to define how much digestion had occurred that this likely had been ingested or eaten approximately [Tr. 183] one and a half to three hours. Now, I think it's very difficult to be more certain exactly, a closer time interval, but I would think that the interval most certainly would have occurred from one and a half to three hours after the food had been taken in the stomach.

Q. Would her death now have stopped that digestive process?

A. It stops it almost completely, but I'm sure there is a little digestion that will continue on by the material that is actually secreted at that time into the stomach. But within —almost all the digestion stops——

Q. At the time of death?

A. At the time of death, right.

Q. Now, have you any way, Doctor, based upon the autopsy that you have, have you any way of determining the approximate time of death of this woman?

A. I can give an estimation of the time of death by several factors. The fact that we received the body in the Franklin County Morgue at approximately midnight or twelve a.m. on the 30th of July. At that time and at the time of autopsy, there was a moderate amount of rigor mortis, which is the hardening of the limbs and the rigidity of the muscles supporting those limbs, that is found after death. The amount of this rigor mortis and the amount of the pooling of the blood into the body would lead me to think [Tr. 184] that the time of death was sometime between midnight or twelve a.m. on the morning of the 29th and three to four in the afternoon of the 30th. In addition to this——

Mr. Supman: Three to four a.m. or p.m.?

A. P.M., the afternoon of the 30th. So this is as close as I can tie it with the information of the livor mortis and the

rigor mortis. The additional information as to the time of death I think must come as far as I am concerned, related to the ingestion and partial digestion of food within the stomach.

Q. You are of the opinion though that death occurred someplace from one and half to three hours after the ingestion of this food, is that right?

A. Yes.

Q. So, if you knew when that food was ingested, then you would be able to pretty closely predict the time of death then, is that correct?

A. That's correct. The time of death prediction is difficult from the livor mortis because of the transportation of the body and the time I gave you, I gave you the broad expanse of time because I wanted to cover the times that could exist there. It's much more important to us to determine when the patient ate the last meal and then try to estimate the time of death from the last meal if we can determine when that meal was ingested.

[Tr. 185] Q. And if you know the kind of food, I presume, also?

A. Yes, that's correct.

Q. Assuming, I believe, you said that you found only vegetable matter in the stomach, is that correct? I mean, no meats or fats or anything like that, is that correct?

A. That's correct.

Q. Would that digest more quickly say maybe than meats or fats possibly?

A. I think it would depend too much upon the type of vegetable matter. Celery and things like that take a much longer time to digest. The loose vegetable matter such as cereal and meal take a shorter period of time. So, I think one must know the type of food we're dealing with before we can——

Q. Let's assume that this person had—that the contents in her stomach came from dry cereal of some kind, a wheat cereal, a dry wheat cereal of some kind, would that make a difference as to the time of digestion?

A. Yes, I think material like that would be digested relatively rapidly.

Q. In what period of time, would you say?

A. Digestion begins very rapidly after the food is taken into the stomach, and it is nearly complete by three or four

hours; and the stomach usually empties all of its material into the tube leading from the stomach within four [Tr. 186] hours. So, in this particular instance, it would be one and a half to three hours after the ingestion of the food, such as cereal.

Q. To the condition that you found on autopsy, Doctor, is that correct?

A. That's correct.

Q. The condition that you found on autopsy in your opinion, would it have been the same as existed there at the time of her death?

A. I think it very closely resembles the material at the time of death.

Q. I see. Would you again, Doctor, give us your—Let me withdraw that question. Doctor, was any examination made for drugs or barbiturates or poisons of any kind?

A. Yes, we did what we call our routine toxilogical examination, which we do on almost all the coroner's autopsies; and we found that there was no evidence of barbiturates, no evidence of alcohol, and no evidence of the narcotic drugs, such as cocaine, codeine, demerol, morphine, and strychnine.

Q. What was your final diagnosis then, Doctor, as to the cause of death?

A. Our final diagnosis was asphyxia due to strangulation.

Mr. Morehart: I see. You may cross examine.

[Tr. 187] Mr. Supman: Could we have a few minutes, your Honor?

(Defense counsel confer with defendant)

Mr. Kistler: We have no questions of the Doctor.

The Court: Anything further?

Mr. Morehart: No. Thank you very much, Doctor.

(Witness excused)

JACK WILLARD, being first duly sworn, as provided by law was examined and testified as follows:

Direct examination.

By Mr. Morehart:

Q. Will you state your name please?
A. Jack Willard.
Q. Where do you live?
A. 220 Fremont, Baltimore.
Q. Are you employed?
A. Employed at Defense Construction Supply Center, formerly Columbus General Depot.
Q. What is the nature of your employment?
A. I'm the Records Management Officer for the D. C. S., sir.
Q. For D. C. S.
A. Defense Construction Supply Center.
Q. These initials throw me. You hear so many of [Tr. 188] them. Are you related to Gladys Willard and Herman Willard?
A. Mother and father.
Q. Now how long have you been living with your mother and father?
A. I would say since last October, around October when I was legally separated.
Q. I see. Now, directing your attention to July 29th of this year, were you living there at that time?
A. Yes.
Q. Did you have occasion to see either your mother or your father on the morning, on the early morning hours of July 29th.
A. I did not see my father. He usually got up about 5:30 and left for Adam Poff's. I did not see him. I did see my mother.
Q. What time did you arise that morning, if you know?
A. It was about twenty minutes after six, or somewhere around there, quarter after.

The Court: Is that word "arrive"?
Mr. Morehart: Arise.
The Court: Oh, "arise". I'm sorry.

Mr. Morehart: What did you do after you got up?

A. Cleaned up, shaved and cleaned up, and dressed and got ready to go to work.

Q. Did you eat any breakfast?

[Tr. 189] A. Just a cup of coffee.

Q. Was your father there at that time?

A. No.

Q. Was your mother there at that time?

A. Yes.

Q. Where was she?

A. She was in the kitchen. She was the one who awakened me and prepared the coffee.

Q. Now, when did you leave for work, do you know?

A. I would say approximately ten minutes till seven. It was usually about twenty till or a quarter till when I left, but this morning it was a little bit late. I left about ten till.

Q. Who was there when you left?

A. Just my mother.

Q. What was she doing when you left?

A. As I was ready to go out the door, she was on the telephone talking to my aunt, Mrs. Anderson.

Q. And how do you go to work? How do you get to work?

A. I usually go up 256.

Q. No. I mean what means do you get there?

A. I drive my car.

Q. Your car, and what kind of a car do you drive?

A. 1963 Buick Wildcat.

Q. Do you take anybody with you to work?

A. I don't take anybody from home with me. I pick someone up at the edge of Columbus.

Q. Do you do that every morning?

A. Yes, I have a rider.

Q. What day of the week was this, do you recall?

A. What day of the week was what?

Q. We're talking about the 29th of July.

A. Friday.

Q. Friday. How did you go to Columbus that morning?

A. The route you mean?

Q. The route, yes.

A. I usually go out 256, and turn at the Snyder Church Road, I guess that is what it's referred to, and go up to 204 and then take the County Road straight up past Grace-

land, I don't know what that County Road is, but I usually go that way, up to 204 and then straight shoot into 256.

Q. Did you pick anyone up this morning, on this morning we're speaking about now?

A. Yes sir.

Q. Do they work at the same place you do?

A. Yes, same office.

Q. What time did you get to work?

A. I would say about several minutes before 7:45 [Tr. 191] I'm not precisely sure, but it was no later than 7:45.

Q. When are you to start to work?

A. At 7:45.

Q. At 7:45, and how long do you work?

A. Until 4:15.

Q. How long did you work this day, do you recall?

A. Well, I worked until I would say about twenty minutes till four. I got a telephone call from my father, and I got the call, I would say, a little after three, and I left about twenty minutes till four.

Q. Now, had you left the plant at any time from the time that you arrived there around 7:45 until you left to come home at about twenty minutes till four?

A. Well, other than lunch, a half four for lunch.

Q. Where do you go for lunch?

A. Usually one of the restaurants around there close. There in Town and Country or someplace close.

Q. How long do you have for lunch?

A. A half hour.

Q. A half hour. What time do you go to lunch?

A. Usually a quarter to twelve, around there.

Q. And with that exception, you were there all the time that day?

A. Yes.

Q. You came home early this day, you say [Tr. 192] as the result of a telephone call, is that correct?

A. Right.

Q. What did you do after you came home?

A. Just started looking.

Q. Started looking for what?

A. My mother.

Q. You had a report that your mother was missing, is that true?

A. Yes. My father called me at work and told me she was missing.

Q. Was there anyone else looking when you arrived home?

A. Yes. My aunts and quite a number of people, I don't recall who all. Then the airplane got out and started looking. But three of my aunts were there and my father and my brother, all looking.

Q. How long did you continue to look?

A. Until dark.

Q. Approximately what time was that would you say?

A. Well, it would be an estimate. I would say probably until around eight o'clock because we had gone clear back to the other road at the covered bridge, County Road there, through the cornfields and so forth. So, I mean I don't know for sure, but I'd say it was close to eight o'clock.

[Tr. 193] Q. Now, what did you do after that?

A. As we were coming back across the field, the neighbor, Mr. Barber, met us and said they had found my mother.

Q. You comtinued coming on home then, is that correct?

A. Yes.

Q. Now did you—do you know of your own knowledge whether your mother had made any arrangements to go away that day?

A. Yes, she told me she was going to pick my aunt up and go to Lancaster.

Q. Do you know what time she was supposed to go?

A. Around ten, approximately.

Q. Would that be in the morning or the afternoon?

A. That would be in the morning.

Q. Did she drive the car?

A. Did she drive a car?

Q. Yes.

A. Yes. She drove a car.

Q. What kind of car did she drive?

A. She usually drove the Pontiac.

Q. What model and year is that?

A. '55 or '56. I think it's a '56.

Q. Did you observe this car when you left in the morning?

[Tr. 194] A. It was sitting right beside the back door in the driveway.

Q. In the driveway. Did you observe this car when you came home from work that day?

A. Right.
Q. Where was it?
A. Same identical place.
Q. Did you look in the car at any time?
A. I looked in the car after I arrived home.
Q. Was there anything in the car?
A. Some water bottles and some things she was going to take to my grandmother. I don't recall what else, but I know there were several jugs of water because the water was too hard there on the farm so they took water up for my grandmother.
Q. Were these bottles full of water?
A. They were full.
Q. Is this where the car is usually parked?
A. Yes, in the driveway.

Mr. Morehart: You may cross examine.

Cross-examination.

By Mr. Kistler:

Q. Mr. Willard, how long have you known Buddy Whittington and his parents?
A. Well, I don't know for sure. I'd say ten years, [Tr. 195] approximately, something like that. I don't know.
Q. Did you ever know of Buddy and his parents visiting in your mother's home?
A. Well, I was never there that I recall when they did.
Q. Did your mother ever visit in the Whittington home?
A. Well, just infrequently.
Q. They were good friends during the last few years, that is, your folks and the Whittingtons?
A. Yes.
Q. Did Buddy and your mother always get along all right to your knowledge?
A. To the best of my knowledge.
Q. Mr. Willard, on the night of the—on the 28th day of July, 1966, do you know if your mother was over to the Whittington home?
A. No, I don't.
Q. Do you know whether or not she had her hair done that night of the 28th of July, 1966?

A. She did have her hair done, yes.

Q. Do you know who did it?

A. No, I don't.

Q. Mr. Willard, did you see her in the morning eating breakfast before you left for work on the morning of the 29th?

[Tr. 196] A. I did not see her eating breakfast, no.

Q. How was she dressed if you recall?

A. She had a housecoat on. I don't recall; I think it was orange or yellow, some light color.

Q. How was her hair when you last saw her?

A. She had a thing over her head. I didn't pay too much attention. It had been recently done or set, something. I don't recall.

Q. Mr. Willard, calling your attention to the morning of the 29th, were you on three different occasions on that morning in the Whittington yard?

A. The 29th?

Q. On the 29th?

A. No, I was not.

Q. Were you there in the yard at any time on the 29th? In the morning, that is, sometime between six o'clock and twelve o'clock noon?

A. No.

Q. Did you pick up anything from the lawn in the Whittington yard at any time between six o'clock in the morning and twelve o'clock noon?

A. No.

Q. Did you return to the home of your parents at any time after you left in the morning?

A. I did not.

[Tr. 197] Q. Were you in the locality at any time on the 29th after you left?

A. Not before three or ten minutes till—around four o'clock, whenever I got home, I don't remember. But not before that.

Q. Is there anyone in the immediate neighborhood in which your parents live and in which the Whittington home is located that closely resembles you?

A. Not that I'm aware of.

Q. What kind of car does your father drive?

A. To work?

Q. Well, on the 29th day of July, 1966, what type of car was your father driving?

A. A Dodge.

Q. Describe the car for us, if you will.

A. Well, I'm not sure of the year. It's somewhere around 1949 or '50. The fenders are rusted. It's strictly a second car, a work car. It's green, greenish color, and I don't even recall whether it's two door or four doors. It's a green colored car.

Q. Do you know what year it is?

A. I'm not sure.

Q. Is there any chrome on the car?

A. No. I don't believe so. The chrome has all been taken off.

[Tr. 198] Q. Is there anything on the car to indicate the make of car that it is?

A. I'm not sure of that. It's a Dodge. I've driven it. I know it's a Dodge, but I'm not sure if the name-plates are on it.

Q. Mr. Willard, on the morning of the 29th of July 1966, did you see your father at all?

A. Not until I arrived home around four o'clock or a little after four, I guess.

Q. Mr. Willard, on the 29th or within two or three days just immediately prior to that date, did you hear any quarreling between your mother and father?

A. No.

Q. Hadn't there been any quarreling between your parents during the last few days before the death of your mother?

A. None that I heard.

Q. Did you hear your mother in the last few days threaten to move to Florida?

A. I beg your pardon.

Q. Did your mother—did you hear her say at any time in the few days preceding her death that she intended to move to Florida?

A. Not me.

Q. Did she tell you at any time around the time of [Tr. 199] her death, or immediately prior thereto, that she didn't know how she could go on living with your father?

A. Absolutely not.

Q. Did you hear her make that statement?

A. I did not hear her make that statement.

Q. Mr. Willard, how long have you been living in the home?

A. I would say since October, somewhere around there. I'm not sure of the date.

Q. Would you at any time, since you've been living there, been quarreling with your mother?

A. No.

Q. If there was any quarreling in that household that could be overheard, it would not have been you and your mother, is that correct?

A. Perhaps you better define "quarreling". I'm not clear on that.

Q. All right. Loud, antagonistic shouting between two parties that could be heard at least a hundred yards away.

A. There's nothing I recall. I was not involved in any type of quarreling like this.

Q. All right. Were your mother and father, when you were home, involved in any such quarreling?

A. No.

[Tr. 200] Q. Did they quarrel at all?

A. Occasionally.

Q. Could it have been heard as much as a hundred yards away in the summertime?

A. Well, I don't know. I couldn't say.

Q. As much as two hundred feet from your mother's home?

Mr. Morehart: Your Honor, I have to object. I don't really see the purpose of this. He said he didn't know.

The Court: He said he didn't know about the distance of a hundred yards. Go on and ask your question. Let's hear what it is.

Mr. Kistler: Could it have been heard as much as two hundred feet, the quarreling?

A. If all the windows were up, possibly.

Q. On the morning of the 29th or on the day preceding, do you know if your mother had packed her clothes to leave her home?

A. Would you repeat that please.

Q. Do you know if on the 29th of July, 1966, or on the day immediately preceding or within two or three days before that, if your mother had commenced to pack her clothes to move from the home?

A. Absolutely not.

Q. Had she done any packing at all?

[Tr. 201] A. No.

Q. That you know of?

A. No.

Q. Could she have commenced packing in suitcases?

Mr. Morehart: I object, your Honor. He's answered this question.

The Court: He answered that. He said no.

Mr. Kistler: Mr. Willard, on July 29th, 1966, was there a little dog in your mother's home?

A. There is no dog in the home. There is a dog on the property, my dog.

Q. I'll ask you if, from your knowledge, if that little dog followed your mother wherever she went?

A. No, I wouldn't say the dog followed her wherever she went because she kept the dog normally tied unless she was going blackberry picking or walk over to the dump to take some trash or cans over there. This is the only time normally she untied the dog. In the daytime, she tied the dog, or at night she tied the dog out in back. In the morning, she would loosen the dog and bring it and put it in the garage because the dog howls. It has long hair, and the heat bothers it, so she would take it loose in the morning and put it in the garage.

Q. Now, Mr. Willard, you're relating what happened when you were there at the home, aren't you?

[Tr. 202] A. I'm relating what I saw for approximately six months.

Q. All right. You leave the house what time ordinarily, in that period of time, in the morning?

A. I'd leave the house normally, I'd say, around twenty minutes till seven.

Q. You'd get back at what time?

A. That varies. I do T.V. repair on the side, and sometimes it's 10:30 or eleven o'clock. And if I have—if I'm going to some place of entertainment, sometimes it's after midnight.

Q. So you wouldn't know then, between those hours, if the dog followed her where she went or not?

A. She has remarked to me that she did not want the dog loose, and other than stating—I know she kept the dog in the garage during the day because she has remarked to me many times this is where she kept the dog in the daytime, and I have noted the dog there in the morning.

Q. Did you see the dog on the day of the 29th?

A. Yes.

Q. Where did you see it?

A. The dog was out back in the—Well, now wait a minute, pardon me. The dog was in the garage. The dog had been loose. My aunts told me they found the dog loose, and the dog was in the garage when I saw her because I looked the [Tr. 203] house over and the garage.

Q. Now, did your mother go to pick blackberries?

A. This I don't know. Apparently not.

Q. Did you ever know of her in the last—around the time of her death to go out and pick blackberries?

A. You mean on this date, the 29th?

Q. A few days before this.

A. Yes, she had been—She and the neighbor lady had picked blackberries.

Q. Did she go alone when she picked blackberries?

A. This I don't know. The last that I knew she went to pick blackberries, she went with Mrs. Estep.

Q. Do you know if she took the dog with her then?

A. I don't know.

Q. Mr. Willard, do you have children?

A. Four.

Q. In the last—since you've been living there in your mother's home, did Buddy ever play with your children?

A. Yes, I think on several occasions. I would not know when or what month. I just recall on several occasions.

Q. Mr. Willard, prior to your—Are you separated from your wife?

A. Yes.

Q. Prior to your separation from your wife, did you live just a few doors near the home of your mother?

[Tr. 204] A. Yes.

Q. And would that be near the Whittington home?

A. Well, it's not as near as my mother's. It's two doors north.

Q. Did your children ever play with Buddy then?

A. Yes, the youngest boy.

Q. Was Buddy ever in your home to visit when you lived in your home before you moved to your mother's home?

A. He was at the home to visit when I was living there with my family.

Q. How was his conduct on those occasions when he was visiting in your home?

Mr. Morehart: I'm going to object.

The Court: Objection sustained. I don't see the pertinence of that to this matter.

Mr. Kistler: We wish to proffer if the witness had been allowed to answer, his testimony would have been that——

The Court: You can proffer the City Hall, but it's incompetent. Objection sustained.

Mr. Kistler: We wish to proffer that if the witness had been allowed to answer, his testimony would have been that his conduct was good.

The Court: Anything further?

Mr. Morehart: I believe that's all.

Mr. Kistler: No, nothing further.

[Tr. 205] (Witness excused)

Aurilla Goodrich, being first duly sworn, as provided by law, was examined and testified as follows:

Direct examination.

By Mr. Morehart:

Q. Will you state your name please?

A. Mrs. Aurilla Goodrich.

Q. Where do you live Ma'am?

A. 6232 Northwest First Avenue, Miami, Florida.

Q. Where are you staying at the present time?

A. I am visiting with my mother, Mrs. Stella Brandon, Baltimore, Route 1. That's on 204, about a mile east of 158.

Q. How long have you been visiting with your mother?

A. We've been here since the 8th of June.

Q. Of this year?

A. Of this year.

Q. Were you visiting there on or about the 29th of July of this year?

A. Yes sir.

Q. Are you related to Gladys Willard of Baltimore?

A. She was my sister.

Q. She was your sister. You were familiar with where she lived in Baltimore, were you?

[Tr. 206] A. Yes sir.

Q. Now, Mrs. Goodrich, directing your attention to the morning of July the 29th of this year, were you at home at your mother's that morning?

A. Yes sir.

Q. What were you doing that morning?

A. Well, I baked two pies prior, or I mean after, the regular housecleaning.

Q. Did you make any effort to contact your deceased sister that morning?

A. Yes sir.

Q. When was that Ma'am?

A. When she didn't show up at my mother's to take my sister to Lancaster. We were expecting her about 10:30 when my sister came in from picking berries. We just thought well maybe she was a little bit late.

Q. What sister was this?

A. This is my sister that lives with my mother.

Q. And her name?

A. Genevieve Anderson.

Q. And she came in from picking blackberries. Go ahead.

A. Yes. She waited. I helped her to get ready because I thought my sister would be there before she was cleaned up from the berry patch, and then since she didn't [Tr. 207] come, my sister said about eleven o'clock she better call and tell her that she was ready, and she didn't get any answer. So we thought perhaps that she had gone berry picking, and we waited a little while and then we'd call again. First my sister would call and then I would call. And then finally my sister said that she was going to call Lula Willard, that's my sister's daughter-in-law.

Q. Where does she live?

A. She lives next door.

Q. Next door to whom?

A. Next door to my sister.

Q. Your sister Gladys?

A. Yes.

Q. Okay.

A. And ask if the car was there. And so she called and she said that she had been over at twenty till nine and Gladys wasn't there, but the car was there. So that was all the more reason why we thought that she had gone berry picking, and it was just a lovely morning to go berry picking. It was nice and cool, and my sister Genevieve is very fond of picking berries and my sister Gladys, of course, knew this; and so we figured that she perhaps thought that she might as well go pick berries, too, because my sister would get back in the fields and the time would pass and she evidently wouldn't be ready when she got [Tr. 208] up there.

Q. You stated that you tried to call your sister. I assume this was by phone?

A. That's right.

Q. A number of times, and your sister tried to call and could get no answer.

A. That's right.

Q. What then did you do?

A. About five till twelve when I put the pies in the stove, and my sister called——

Q. This five till twelve is before noon, is that right?

A. Yes. My sister said she was going to call again and have Lula check to see if she had returned. And so I said if she hasn't, my husband and I will go over and see what happened to her because we figured maybe she stepped in a hole, groundhog hole or something, and broke her ankle, and she wouldn't be back, something happened, because we knew good and well she would come or at least call if it were at all possible.

Q. What did you do?

A. So then my husband and I got in the car and went over to my sister's.

Q. When did you leave your home, do you know?

A. It was shortly after I put the pies in, which [Tr. 209] evidently would have been about ten after twelve.

Q. That you left?

A. Yes.

Q. You and your husband, you say?

A. That's right.

Q. Where did you go?

A. We went over to my sister Gladys' in Baltimore, and when we got there, we both went in and I told my husband——

Q. In where?

A. In Gladys' house. I told my husband you go down in the basement and I'll check upstairs. I'll check the downstairs and the upstairs, which really after her boys were married, she uses as an attic and not bedrooms. So, I did that, and I came down and I said did you find her, and he said "No". And then we went outside and Lula, of course, and the children were out there, and I said where did Mrs. Whittington live, because I had heard her speak so much of Mrs. Whittington, and she showed me the house. And I went over and knocked at the door.

Q. What door did you go to?

A. The front door. Because the door was closed, I was so afraid nobody was going to be home. At that time, it had warmed up and ordinarily you would think people would have the door open, and I was so relieved when the door was opened and the son came to the door. And I said, "Is your [Tr. 210] mother home?" And he said "No", that they had gone to Canton early that morning. So I told him that I was Mrs. Goodrich, Mrs. Willard's sister, and that we were expecting Gladys up to my mother's to pick up my sister Genevieve to go to Lancaster about 10:30, and she hadn't showed up yet and we were worried about her. And Buddy said she was over there that morning and brought some curlers back.

Mr. Kistler: Objection and ask that statement be stricken.

The Court: Objection overruled.

Mr. Kistler: Exception.

Mr. Morehart: Go ahead.

A. So then, I said, "I thought that your mother could tell me where she went berry picking." And Buddy says, "Why, she——

Mr. Kistler: Objection.

The Court: Objection overruled. Now just don't interrupt the witness. This line of questioning is perfectly proper, and the answers are proper, and are not barred by anything. So, you may take any exception you want of note but don't interrupt the witness.

A. I said, "thought your mother could tell me where she went berry picking." And Buddy said, "she didn't go berry picking with my mother. She went berry picking with Mrs. Estep." And I said, "Where does she live?" And he [Tr. 211] says, "You know where the green house is", and I said, "No." He says, "It's just back of Jack's." That's Jack Willard, her son. And so I thanked him and started down the walk, and when I got to the end of the walk, he said, "If you hear anything or if I find out anything", now, I'm not just certain there just which phrase he used, but he didn't complete the sentence. That's all he said,—If I hear anything or if I find out anything. So I turned around and said, "I'd appreciate it", and went on over to the house or to the car. My husband and Lula Willard and the children were still out front, and told him we were to go over to Mrs. Estep's that she could tell us where my sister Gladys went berry picking. So we got in the car and went over to Mrs. Estep's, and when I went to the door, the front door, as I always go to anybody's house, she came to the door; and I said, "Mrs. Estep?" And she said, "Yes." And I told her that I was Mrs. Goodrich, Mrs. Willard's sister, and I wondered if she could tell us where Gladys had gone berry picking. And she said, "Just a minute", she says, "until I get my bonnet, and I'll go with you and show you." And we were, of course, very glad for that. So she got her bonnet and came out and I said, "Could we drive over?", and she said, "Well, you can." So, she showed us how we could get over, naturally we wanted to go the quickest way we could. So we drove over and parked by the dump, I guess [Tr. 212] you would call it, that circular drive there. And Mrs. Estep and my husband and I got out and crossed the railroad tracks and climbed over the fence into someone's cornfield, and Mrs. Estep said, "sometimes she goes—sometimes we go this side of the cornfield and sometimes we go the other side." So I said to my husband, who has a heart condition

and I'm trying to pick the easiest way for him to go, I said, "Well, you take this side and", I said, "I'll go the other side." And Mrs. Estep says, "I'll go with you." Well, Mrs. Estep is a little older than I am and she didn't have any hose on, and I had taken time to ask my sister to throw me a pair of cotton hose, knowing how it is out in a berry patch. And then, too, I thought perhaps I could go a little faster without her, and I was anxious naturally to see if I could locate my sister who, I was sure, had fallen or had a heart attack, not that I knew anything was wrong with her heart. And so I said, "Well, now suppose you just wait here because my sister in the meantime might come back, and my husband and I would both miss her." And she said that was a good idea. So she waited there while we went to look for her. As I say, my husband went one side and I went the other and when we met I said to my husband, I said, "Suppose you go back and see if there is any word from Gladys and also maybe you better take Mrs. Estep home. She evidently is pretty tired." And so I said, "In the [Tr. 213] meantime, I'll go around this other field here." I found afterward it was a sheep pasture, and when I got around that, I came back and then I saw my husband about where I had originally left him, or left Mrs. Estep. And I called and I said, "Is there any word?" And he said, "No." And he started toward me then, and when I got to him, or I mean when we met, he said that Mrs. Estep said we hadn't gone far enough, that they picked berries still farther. So we both then started together up to the place where Mrs. Estep said. It was, I believe, an old Boy Scout Camp, and as we were there, we had passed this point and I had remarked to my husband that these berries had looked as if they had been there and I thought if my sister had been that way she'd surely have picked those because they looked very nice. And I looked across and there was Buddy. And I was, of course, kind of surprised, but I didn't think anything about it really. And he said that he had come out to help us look.

Mr. Kistler: Object and ask that be stricken.

The Court: Objection overruled.

Mr. Kistler: May I state for the record; this is the first that we've had an opportunity. You said I shouldn't object. But I would like to state and ask that any statements that she has made in this long statement "that Buddy the defendant said", we ask be stricken.

[214] The Court: That's all overruled. That's overruled as far as the evidence I've heard now.

Mr. Kistler: Is it all right, your Honor, if we object when she starts to make a statement?

The Court: You may object. You can object to this statement she's going to make now about Buddy, but it's overruled. Proceed.

A. So I said to Buddy, I said I had seen in the distance, it looked like a No-Trespassing Sign, and he said this—he told who this property belonged to and that he had seen this man. He had stopped him, he said, and I said, "Did he say he had seen anything of Gladys?" And he said "No, he hadn't." So I said that I had just remarked about those berries looked as if—I mean, if she had been by that way, she would have picked those. And so we went on and he was on one side of the briars and my husband and I on the other side, and went on up to the——

The Court: When you say "he", I don't know who you mean.

A. I mean Buddy.

The Court: Is that Buddy Whittington here, you're referring to?

A. Yes, Buddy Whittington. Buddy Whittington. Although, I might add, I didn't know his name, and I called him Dick. And he was on one side, and my husband and myself [Tr. 215] were on the other, and we got up to a fence. Oh, the next field over there was really briary and I knew my sister didn't like to pick berries in a place like that. But I could see over, oh perhaps as far as from here across the street, there were a lot of briars that could have been berry briars, and I asked Buddy Whittington if—what was over there, and he said, "Well, there was a drop-off." He said he would go over there and look. And so I

said, "My husband and I will go down this side of the fence and we'll go on in then and see if they've heard anything." And so that's what we did, and when we climbed across the fence there by the railroad tracks, why we met Buddy Whittington again, and I looked over and I thought —I said, "Our car is over there, isn't it?" And Buddy Whittington says, "You can't get through here though, down that way. You'll have to go through here." So we went through there, and we started to the car and Buddy Whittington was, I suppose, as far behind us as you are your Honor, and I said, "Dick, would you like to ride?" And he said, "Yes." And when we got to the car, he said he would ride in the back seat, and my husband said, "No, there's plenty of room in the front seat." And I said, "Sure." And so we all got in the front seat, and as we started—my husband started the car—Buddy Whittington said, "You have me mixed up." And I said, "Well, how is that?" He said, "You called me Dick and" [Tr. 216] he said, "my name is Buddy." "Oh," I said, "I'd heard my sister speak of a Dick Whittington, but I guess that was somebody perhaps her sons had known." Anyway, so we went on, and I reminded my husband that that road was very rough and when we got out about to the end of this black gravel road and ready to turn to the right onto the road past the mill, we looked down and saw Mrs. Estep and my sister, Mary Young, and her husband coming. So we got out of the car and went down over the bank to meet them to find out if they had heard anything. And they said they had not heard anything. They wondered if we had asked at the mill, mill, elevator, that is, since there's a paper mill, elevator. And I said, "I'll go over there." And "No, we hadn't asked if they had seen her go berry picking." So I went over to the mill and asked had they seen her. And they said "No", they had been there all morning, or all day, but, of course, they could have missed her, they said. So the rest had gone—my sister and Mrs. Estep had gone on back, and I told them that they hadn't heard anything. So after—well, we all went back again and looked some more and then my sister, Mildred Beard, and her husband came over. We continued to look and then we finally all went into the house to see if any word

had been heard, which hadn't. We stayed in there, oh perhaps, you kind of lose track of time, perhaps forty-five minutes or an hour maybe, and then [Tr. 217] we all—or I don't say we all. My sister Mildred, and my sister Mary, myself, and Dick Willard, and Jack Willard, and my nephew Max Anderson, went back in the field, in the berry field again to look for her, and we stayed back there until dark. We used the flashlight as we were coming in, and Mr. North joined us back there and another boy, I don't remember his name.

Mr. Kistler: If the Court please, at this time, I'd like to move that the statements in this last period of testimony made about Buddy be stricken.

The Court: And what is the basis for that?

Mr. Kistler: To allow them would be requiring the defendant to testify against himself in an indirect fashion.

The Court: What's your authority for that? Have you got any citation on that?

Mr. Kistler: The defendant in a criminal case cannot be required to testify against himself.

The Court: Based on this Miranda Case?

Mr. Kistler: Based on the principles of criminal law, Miranda Case, all the cases.

The Court: You mean to say that somebody who ultimately becomes a defendant in a case, people can't testify about what the conversations were? It that the basis of your objection?

Mr. Kistler: We're saying in view of this case, where [Tr. 218] the minor defendant had not been nformed of his rights, to permit statements as to what he made would be the same thing as requiring him to testify.

The Court: And what is your legal authority for that?

Mr. Kistler: The rights as laid down by all the federal decisions and——

The Court: What are those federal decisions?

Mr. Kistler: All decided previously. The Escobedo, the——

The Court: Escobedo doesn't say anything about that.

Here's the Escobedo Case, and I'd like for you to show me where it says that. What page does it say that?

Mr. Kistler: It's a matter of general law that a defendant cannot be required to testify.

The Court: So then it isn't in the Escobedo Case?

Mr. Kistler: I don't say whether it is or not, but I'm say-on the basis of rights established by——

The Court: Do you—Have you got any authority that you're quoting here? Are you citing it from the Miranda Case?

Mr. Kistler: On the basis of rights established, it would be——

The Court: Can you show me where it says that in the Miranda Case?

Mr. Kistler: Your Honor, you know the law better [Tr. 219] than we.

The Court: Well, you're the one who's citing it, and I'm wondering. I'm asking you.

Mr. Kistler: And we're stating that to allow statements would be to require the defendant to testify against himself.

The Court: Motion's overruled.

Mr. Morehart: Mrs. Goodrich, let's go back a moment, and I think you stated that when you came down to your sister's place and after searching the house and the basement and learning where the Whittington residence is that you went over to the Whittington residence and the person whom you know as Buddy Whittington came to the door, is that correct?

A. That's correct.

Q. Could you tell us approximately what time that was?

A. I would judge about 12:30.

Q. In other words, you said, I believe, that you left your home approximately ten after twelve, and you came down and you searched your sister's house.

Mr. Kistler. Just a minute. I'm sorry. I object. That isn't exactly—that isn't what she said.

The Court: If you will—we'll just give her the opportunity, and we'll find out what she says, Mr. Kistler. [Tr. 220] I would like to know, too.

Mr. Morehart: I believe that you stated you left your

house about ten after twelve to come to your sister's, is that right?

A. That is right.

Q. As near as you can fix the time, it was approximately 12:30 when you went over to the Whittington home and you talked to Buddy, is that correct?

A. Yes.

Q. Now, the person you saw over there, whom you have have testified to as being Buddy Whittington, is that person present here in this courtroom?

A. Yes sir. Right there (witness points at defendant).

Q. Sitting next to his mother, you mean, Mrs. Goodrich?

A. Yes sir.

Q. And that's the person whom you know as Buddy Whittington, is that correct?

A. Yes sir.

Q. Now Mrs. Goodrich, you stated, I believe, this is in order to establish our continnity here, that approximately around dark, or at least you did use the flashlight coming back in after your last search, and where did you come back to?

A. We came back to the Willard home.

[Tr. 221] A. Well, now wait. As we were coming back, we hadn't crossed the road yet, Mr. North was going back and get a flashlight, and we were going to search around the dump further. I forgot to add that. But then we saw a man coming across that field between the Willard home and the dump, and we called and asked had he any news, and he said, "Yes." So, we all—we went to meet him.

Q. Do you know who this person was?

A. Yes. I didn't know at the time, but it was Mr. Barber, next door to the Whittingtons.

Q. I see. What did you do after that, Mrs. Goodrich?

A. Then we went to the Whittington home.

Q. You went to the Whittington home?

A. Yes.

Q. Did you go inside?

A. I didn't know—I went around the side, Jack and I, and I don't know who else. I got ahead of my sisters, and I didn't know it was Mrs. Whittington at the time, but she said not to go in. And then later, I went around the front of

the house and met my sisters, and we all, of course, felt that we should see her. And so I went up the front steps, and I got in the living room, and I was met by—or some man told me I'd have to go back out. According to the picture I saw in the paper, I guess it was the Fire Department Man, Fire Department Head.

[Tr. 222] Q. All right. Anyway, what did you do then? Did you leave home then?

A. Oh, yes.

Q. Then what did you do?

A. Went over to my sister's.

Q. What, if anything further, did you do then?

A. We just sat.

Q. Did you have any further conversation with Buddy Whittington other than what you've related here?

A. No. Well, I did omit something. Going back to the time when I saw my sister Mary and her husband, and Mrs. Estep coming across that field, I told my husband——

Mr. Supman: I'll object.

The Court: Objection overruled.

Mr. Supman: Hearsay.

A. I told my husband——

The Court: She's saying what she said. Go ahead, Mrs. Goodrich.

A. I told my husband because of his heart condition that he should just go ahead and take Buddy Whittington home and just stay there. Because, I guess you all know, anybody with a heart condition shouldn't exert himself too much, and I didn't want to have to go looking for him.

Mr. Morehart: Did he?

A. Yes, he took him home.

[Tr. 223] Q. In the car?

A. In the car. But he didn't stay. He brought the car back with a jug of water.

Q. Your husband?

A. Yes.

Q. So, you had searched from the time that you came over about 12:30 until dark, is that right?

A. Yes, that's right, with the exception of that short period I was in the house.

Mr. Morehart: You may cross examine.

The Court: This testimony has been rather lengthy, and I think it is about time for another recess here.

(Fifteen minute recess)

Cross-examination.

By Mr. Supman:

Q. Mrs. Goodrich, you stated that your home was in Florida?

A. Yes sir.

Q. And you had been visiting since June?

A. That's right.

Q. During the course of your visiting with your mother, you had the opportunity to be doing a lot of visiting with Gladys?

A. Well, we talked to her on the telephone every day. She either called us or we called her.

[Tr. 224] Q. How often did you visit with her personally?

A. She would come up at least once a week, perhaps twice.

Q. Mrs. Goodrich, did your sister Gladys ever discuss with you difficulties that she was having with Mr. Willard?

A. Oh no.

Q. Was there any thought about Mrs. Willard going back to Florida and visiting with you?

A. Oh no.

Q. What were your plans about returning to Florida?

A. We will return to Florida approximately the first of February. At the present time, my husband is enrolled in Ozark Bible College in Joplin, Missouri.

Q. Were you acquainted with the fact that there were a lot of quarreling and arguing going on in the Willard home?

Mr. Morehart: I'll have to object to this, your Honor. That has not been established.

Mr. Supman: Were you acquainted if there were any quarreling or arguing going on?

A. I imagine every home has some argument.

Q. Was this discussed with you by your sister?

A. No. No sir.

Q. Are you acquainted with the dog that was in the Willard home?

[Tr. 225] A. Acquainted?

Q. Well, not on a speaking basis. But, do you remember, the dog being around there?

A. Yes. That particular day, my brother-in-law, Russell Long was leading it over to the field to help in the search.

Q. Had you ever seen the dog with your sister out in the yard and visiting around or blackberry picking?

A. No sir.

Q. Do you know if the dog would follow your sister on occasions?

A. I've been told that she always took the dog with her when she went berry picking.

Q. I see.

A. And the dog was loose at this particular time. That was another reason we thought she was berry picking.

Q. As a matter of fact, the dog liked to follow your sister about any place she went in the neighborhood, isn't that so?

A. Well, I wouldn't say that. They kept the dog tied all the time.

Q. But it was not tied that day?

A. It broke loose. The only time the dog was loose was if she'd go berry picking. She never took the dog around visiting with her.

[Tr. 226] Q. Do you know how the dog may have got out that day?

A. I understand that she had the dog tied to a tree, wherever she ties him, and he broke the rope.

Q. Do you know who told you that?

A. No sir. I do not.

Q. Someone must have.

A. I suppose so.

Q. Could Mr. Willard, the husband, have told you that?

A. No. No, that was told before we ever went back to look for her, I guess. That didn't seem important really.

Q. Was Buddy Whittington attempting to be helpful that day?

A. We thought so, yes.

Q. Were there other people like Boy Scouts, out helping

to look in the woods and berry patches trying to find your sister?

A. After the Emergency Squad were called, yes. There were Boy Scouts that helped to look for my sister. And, also, a man flew over in the airplane, if you want that.

Q. Did you answer the question as to whether you ever heard any quarreling between Mr. and Mrs. Willard?

A. Did I answer it?

Q. Yes. Did I ask you that question? If not, I will. Did you ever hear Mr. and Mrs. Willard do any quarreling?

[Tr. 227] A. Not to speak of, no.

Q. Does that mean yes or no, "not to speak of"?

A. You put your own interpretations on it.

Q. Well, I'll ask you. Yes or no. Have you heard them quarreling?

A. Years ago perhaps. But just visiting here, I don't think people are apt to quarrel when you're visiting them.

Mr. Supman: I think that's probably right. Thank you. That's all. You're excused.

(Witness excused)

LULA WILLARD, being first duly sworn, as provided by law, was examined and testified as follows:

Direct examination.

By Mr. Morehart:

Q. Will you state your name please?

A. Mrs. Lula Willard.

The Court: Will you talk a little louder please.

A. Mrs. Lula Willard.

Mr. Morehart: Where do you live?

A. 226 Fremont Street.

Q. What Village?

A. Baltimore.

[Tr. 228] Q. Are you related to, or were you related to, Gladys Willard?

A. Yes, she's my mother-in-law.
Q. She is your mother-in-law?
A. Yes.
Q. Where do you live in regard or in relation to where she lived?
A. You mean the houses?
Q. Yes.
A. Why next door to each other.
Q. You live next door?
A. Yes.
Q. Your house is immediately north of hers, is that right?
A. It is on this side. Is that north?

Mr. Morehart: Yes.

A. Yes.
Q. Okay, so you live right close?
A. Yes, we do.
Q. Do you recall the day that your mother-in-law came up missing, Mrs. Willard?
A. Yes. It was Friday, the 29th of July.
Q. I believe that's right. Do you recall that day?
A. Yes, I do.
Q. Do you recall that morning of July the 29th?
[Tr. 229] A. Yes.
Q. Did you by any chance have occasion to see your mother-in-law, Gladys Willard, that morning?
A. No, I did not. I went over to her house. It was twenty minutes till nine.
Q. Twenty minutes till nine?
A. She was not over there. I did not see her none.
Q. Why did you go over there?
A. Because she usually goes shopping on Friday. Then, I wanted to get my little girl a pair of pajamas, the only reason I went over there for.
Q. I see. You wanted to have her bring your little girl a pair of pajamas?
A. Yes.
Q. You say that was twenty minutes till nine?
A. Yes.
Q. You did not find Mrs. Willard?
A. No, she was not there.
Q. She was not there?

A. No, because I hollered, "Gladys" and "Gladys", and she wasn't there, so I went back home.

Q. Was her car there?

A. Yes.

Q. Where was it parked when you went over there?

A. It was in the driveway where she usually has it.

[Tr. 230] Q. That's where it's usually parked?

A. Yes.

Q. Did you see her at any time that day?

A. No, I did not.

Q. Did you go back any other time other than at twenty minutes of nine in the morning?

A. I think it was about ten o'clock, I went back over and she wasn't there. And then as as time went on, about a quarter of twelve, her sister, you know, Genevieve, started calling, and I sent my little girl, Susan, over because we were eating dinner—me and my husband and family were eating dinner, you know, over to Gladys'. She wanted to know if Gladys had left yet.

Q. You sent your daughter over to see if she could find her?

A. Yes, and she said grandma wasn't over there. That's what Susan told me. So we told Genevieve, Gladys wasn't over there.

Q. Could you observe whether or not her car was still there?

A. You mean, what time?

Q. When you sent your daughter over?

A. My daughter said her automobile was still there—Susan, cause we were eating dinner right at the time when the telephone call came through. Susan was the one who [Tr. 231] answered the phone, and Susan just went over. She said grandma's car was in the driveway.

Mr. Morehart: You may cross examine.

Cross-examination

By Mr. Supman:

Q. Mrs. Willard, you live right next door?

A. Yes, I do.

Q. Did you hear in the months previous, quarreling between Mr. and Mrs. Willard?

A. Now, who do you mean?

Q. Between Gladys Willard and her husband?

A. No, I did not.

Q. You never heard any quarreling?

A. No, cause I don't pay any attention to what goes on in family affairs. I'm busy with three kids.

Q. I see. Were there occasionally some noises or rumblings like people in disagreement there next door?

A. You mean over at Gladys and Herman's?

Q. Yes.

A. No.

Q. You never remember hearing any?

A. No.

Q. How about the dog? Did you see the dog that morning?

A. Yes, my little girl, Susan——

[Tr. 232] Q. And where was it?

A. Susan said it was behind the house, you know, coming to our house from grandma's house, and she said she was loose there.

Q. Is this the Willard house that it was behind, Gladys' house?

A. Yes. Our house is on the north side, and Gladys', you know, is right there. And the dog was loose, and Susan says, "Mother, grandma's dog is loose. Pep's loose." That's all I know.

Q. The dog's name is Pep?

A. Yes.

Q. Did you see any other men around the Willard house that morning before noon, two or three men perhaps, one to three men maybe in a vehicle, a truck?

A. You mean in the morning?

Q. Yes. Maybe a garbage truck?

A. No, I did not.

Q. Do you have a garbage pick-up service?

A. Yes, we do.

Q. Do the Willards have the same service?

A. You mean, Mrs. Willard, my mother-in-law?

Q. Yes.

A. No, they don't haul her garbage away.

Q. Was anyone at your house to pick up any garbage?

[Tr. 233] A. You mean—Mr. North does.

Q. Was he there at your place that morning?

A. You mean Friday morning, the 29th?
Q. Yes ma'am, that's the day we're talking about.
A. Sure he was there.
Q. About what time?
A. He doesn't have any certain time he comes there. I didn't see him there that morning.
Q. He didn't come that morning?
A. He come that morning.
Q. He came but you don't know what time?
A. No, I don't know what time because he doesn't have any certain time to come.
Q. Now, who is this man?
A. You mean, who picks my garbage up?
Q. Yes.
A. Mr. North. He hauls all the garbage around there in town.
Q. But he doesn't haul it from your mother-in-law's house?
A. No, I never—he never collects over there so he probably doesn't haul her garbage away.
Q. Can you give us any idea when you last saw your garbage that morning. How about after breakfast? Did you put some garbage out then?
[Tr. 234] A. No. I never put the garbage out. My boy always does—Jamey does. The boy always puts the garbage out for me.
Q. Do you know what time he put it out that morning?
A. He put some out maybe the night before for the garbageman to pick up last, oh, Thursday night.
Q. Was it picked up before noon that day, do you know?
A. I really don't know.
Q. Before dinner?
A. I really don't know because I didn't put no garbage out. I didn't check to see if he went or not.
Q. I gathered from what you said that it was picked up some time that day?
A. Yes. He comes around on Friday.
Q. Some time on that day, on Friday?
A. Yes.
Q. And you know it was picked up on Friday?
A. Yes. He always does pick our garbage up.
Q. But you didn't see him?

A. No, I did not see him, Mr. North.

Q. Then you weren't looking outdoors all the time, were you?

A. No.

Q. There could be comings and goings, and you not [Tr. 235] see people?

A. Yes, cause I'm busy in the house with Susan and Jamey and the little baby two years old.

Q. I suppose you have the television set on where it makes a lot of noise and it entertains the children?

A. Yes.

Q. Could this account for the fact that most of your sounds would be in the house due to the television set being on?

A. I imagine.

Q. About how many hours a day is your television set on as a rule, Mrs. Willard?

A. In the morning, it's on, I suspect, from about 8:30, maybe eight o'clock to ten o'clock.

Q. In the mornings?

A. In the mornings.

Q. What time do you people usually get up in the morning?

A. Now see, my husband has different shifts.

Q. How about that morning? That Friday, the 29th?

A. The 29th?

Q. Yes ma'am.

A. I got up to get my husband off to work. He went to work—my husband, Dick, he went to work at a quarter to seven.

[Tr. 236] Q. A quarter to seven, that morning?

A. Yes, and I went back to bed.

Q. Now, if he went to work at 6:45, what time did you get up, do you recall?

A. I got up about 8:30.

Q. Oh then you didn't get up with your husband?

A. No, I got up with my husband, but I went back to bed.

Q. You didn't get up?

A. No.

Q. But you went back to bed?

A. Yes.

Mr. Morehart: She doesn't understand. She got up, and then she went back to bed.

Mr. Supman: Did you get up when your husband got up?

A. Yes.

Q. Your husband got up or he left at 6:45?

A. He left at 6:45 because he goes to work at seven o'clock.

Q. You were up at the same time your husband was up?

A. Yes, but I went back to bed.

Q. What time did you get up that morning?

A. About 8:30. I mean, I was up when my husband was up at six o'clock, but——

Q. Your husband left at 6:45 in the morning?

[Tr. 237] A. Yes.

Q. So you were up at 6:45 in the morning?

A. Yes.

Q. Then you would have had to get up before 6:45 in the morning, wouldn't you?

A. Oh, I see what you mean now. I got up about fifteen minutes after six.

Q. All right. So you got up at 6:15?

A. Yes.

Q. Did you see any comings or goings next door of Mr. Willard, the father, or the son?

A. No, I did not.

Q. I see. You didn't hear any cars coming or going either that time of morning?

A. No.

Q. Do you normally hear them coming and going in the morning at that time?

A. You mean, my father-in-law, Mr. Willard?

Q. Yes ma'am.

A. Sometimes, if I'm up before six o'clock, I see him go; and if I'm not up before six, I don't see him go.

Mr. Supman: I see. Thank you. That's all.

(Witness excused)

[Tr. 238] ELWOOD R. PHILLIPS, being first duly sworn, as provided by law, was examined and testified as follows:

Direct examination.

By Mr. Morehart:

Q. Will you state your name please?
A. Elwood R. Phillips.
Q. Where do you live sir?
A. Baltimore, Ohio.
Q. What is your occupation or profession?
A. I'm Chief of Police of Baltimore.
Q. How long have you been Chief of Police of the Village of Baltimore?
A. Nine years.
Q. Prior to that time, what did you do?
A. Sheriff's Department.
Q. What connection did you have with the Sheriff's Department?
A. I was a Deputy Sheriff.
Q. How long were you Deputy Sheriff?
A. Two years.
Q. So, you've been in law enforcement for the last eleven years, is that correct?
A. That's right sir.
Q. Were you acquainted with Herman and Gladys [Tr. 239] Willard in Baltimore?
A. Yes sir.
Q. You knew who they were?
A. Yes sir.
Q. Do you know where they live?
A. Yes sir.
Q. Where do they live?
A. 215 Fremont Street, or 220 Fremont Street rather.
Q. 220 Fremont Street in the Village of Baltimore?
A. That's right.
Q. Are you acquainted with Buddy Whittington?
A. I am.
Q. Are you acquainted with his parents—
A. I am.
Q. —Mr. and Mrs. Orville Whittington?
A. I am.
Q. How long have you known them?

A. I have known Mr. Whittington for years, I'd say at least twenty years.

Q. How long have you known Mrs. Whittington? A number of years?

A. A number of years.

Q. And Buddy. How long have you known him?

A. I've known Buddy for six or eight years, I expect, as a child.

[Tr. 240] Q. Do you know where he lives?

A. I do.

Q. Where does he live?

A. 215 North Fremont.

Q. And that is where?

A. Baltimore, Ohio.

Q. And that's in this county?

A. Fairfield County, Ohio.

Q. Mr. Phillips, did you have occasion in your capacity as Chief of Police of the Village of Baltimore to be called to the vicinity of the Willard home on or about the 29th day of July of this year?

A. I did.

Q. And approximately when was that?

A. Approximately three o'clock.

Q. Do you know who called you?

A. Why, the Emergency Squad.

Q. Did you go there?

A. At once.

Q. What did you find when you got there?

A. We were told that Mrs. Willard was missing.

Q. What did you do?

A. We started to search for Mrs. Willard.

Q. Where did you search?

A. We searched the house, her home, the outbuildings, [Tr. 241] the shrubbery and so forth around the home. And then we went north toward the railroad and searched along a piece of ground that used to be used as a dumping ground for the Gaylord Container Corporation up there which is grown up in bushes and so forth. We searched that and north of the railroad.

Q. How long did you search?

A. Well, I'd say all together we searched about three and a half to four hours.

Q. That would have been from a little after three to maybe seven or 7:30, is that right?

A. Nearly seven, yes.

Q. Did you find Mrs. Willard during that period of time?

A. We did not.

Q. Did you—what did you do after that, Mr. Phillips?

A. After we gave up the search?

Q. Yes.

A. Well, we—I went and talked to a few of the neighbors in the community there. I talked to some of Mrs. Willard's sisters, and I talked to Mr. Willard. I talked to Mrs. Estep and to Mrs. Barber in reference to the missing woman, and the only two I could find that had actually seen Mrs. Willard was Mrs. Estep, who saw Mrs. Willard at [Tr. 242] approximately 6:30 in the morning at the rear of her lot, presumably feeding her chickens. Mrs. Estep stated that she had spoken to Mrs. Willard just briefly. I talked to Mrs. Barber. She stated she saw Mrs. Willard at 7:30 or a quarter of eight in her own yard drawing water from a hydrant, presumably for her dog.

Q. Now, after talking with these people, what did you do?

A. Well, we discussed discarding the search at the present time, at that particular time, although some of them were still searching. At approximately eight o'clock, I went home to get something to eat.

Q. By the way, had you seen either Mr. or Mrs. O. A. Whittington during this interval, before you left?

A. I saw them just before I left, yes. They came home. I can't give the exact time on that, but it was presumably 7:30 or a little bit later.

Q. You saw them where?

A. They pulled into the driveway, into their place.

Q. I see. Did you see Buddy at that time?

A. Not at that time.

Q. Not right at that time?

A. No.

Q. I believe you stated that you went home?

A. I went home.

[Tr. 243] Q. What if anything did you do after that?

A. I went home to get something to eat. At approximately 7:20, or 8:20 rather, I was called back.

Q. And what did you do?

A. Went back to the—to that particular street, and I was told they had found Mrs. Willard in the Whittington home.

Q. What did you do?

A. So, I went in the home, and I asked Mr. Whittington——

Q. Who was in the home at the time?

A. Mr. Whittington and Buddy, the Reedy boy. I don't believe I saw Mrs. Whittington in the home at that particular time. Loy Grile, the Chief of the Squad, and I went in and I asked Mr. Whittington where the body was, and he said, "in the bedroom." Mr. Grile and I went into the bedroom and checked as to where Mrs. Willard was.

Q. Where did you find Mrs. Willard?

A. Found Mrs. Willard under the bed, in the room of Buddy's.

Q. Was any examination made at that time to determine whether or not Mrs. Willard was alive or dead?

A. Yes.

Q. Who made that examination?

A. Mr. Grile and myself.

Q. What was done?

[Tr. 244] A. That was a pulse check, was all.

Q. Just a pulse check?

A. Just a pulse check. We just took ahold of Mrs. Willard's arm.

Q. You did not move the body?

A. No.

Q. Now, will you tell us please—withdraw that question. Mr. Phillips, I'm going to hand you what for purposes of identification has been marked as State's Exhibit 4. Would you look at that please, and see if you can recognize that?

A. I do.

Q. What is it?

A. That is one photograph of the room before anything was disturbed. That's myself and Dr. Kersell.

Q. Is that the room where the body was found?

A. That is the room where the body was found.

Q. Can you tell us from that photograph, where the body was, sir?

A. Under this side of the bed, next to where we're standing, right there.

Q. I see. Are you, in that photograph, near the foot or the head of the bed?

A. I'm near the foot of the bed.

Q. You're near the foot of the bed. Are there any [Tr. 245] windows in that room?

A. There's a window to my left there, on the north side of the house.

Q. Now, I hand you also photographs which are marked for identification as State's Exhibits 1, 2, and 3, and ask you if you'll look at those and identify those please.

A. Number 1 is the body of Mrs. Willard.

Q. Mrs. Gladys Willard?

A. Mrs. Gladys Willard. After the springs and mattress had been removed so the body would not be disturbed.

Q. I see. Is that the body you found there?

A. That is the body we found.

Q. Number 2?

A. Number 2, that is another photograph of Mrs. Gladys Willard as she was found and after the springs and the mattress had been removed.

Q. Number 3?

A. Number 3 is the body of Mrs. Willard after the springs and the mattress had been removed.

Q. Now will you tell us, anything unusual about the body?

A. As to dress?

Q. Yes.

A. Her dress was as is seen at the present time. It was raised up, and the panties and the girdle had been [Tr. 246] pulled down.

Q. Did she have glasses on?

A. No, not at the time.

Q. Where were they?

A. Her glasses were found right beside her body, here, near the head.

Q. Anything else found near the body?

A. The glasses, the lower set of teeth, a hairnet, and her shoes, as seen here.

Q. Now, if you go around the bed in Photograph No.—State's Exhibit No. 4, as you would go around the foot of the bed and over towards the window, which would be the north side of the room, before the bed was torn up or anything, or the bed spread removed, could you by just looking down see the body of Mrs. Willard?

A. No.

Q. You could not?

A. No.

Q. In other words, you would have to have gotten down and looked under to have seen the body?

A. That's right.

Q. Do you know who found the body?

A. My understanding is that Mr. Whittington found the body.

Q. After you found this body and you determined that [Tr. 247] she was dead, what if anything did you do?

A. I prepared to leave to call the Sheriff's Department, to get the coroner and the photographer.

Q. Did they come?

A. Yes.

Q. Who came?

A. Dr. Kersell and Ned Webb, the photographer.

Q. Anyone from the Sheriff's Department?

A. Mr. Berry from the Sheriff's Department.

Q. And what then did you do?

A. Well, they took the photos of the room before anything was disturbed and, after the photos of the room had been taken, Dr. Kersell stated that he didn't believe we could move the bed without disturbing the body; so we removed the mattress and the springs, and Dr. Kersell made his examination.

Q. What then, if anything, was done?

A. How's that?

Q. What, if anything, was done after that?

A. After that, I think, Mr. Berry and I talked to the family some, asked—let's see, we asked Buddy if he had been around home all day, and he stated, "Yes."

Mr. Supman: I'll object, your Honor.

The Court: Objection overruled.

Mr. Supman: Your Honor, in the interest of time, [Tr. 248] may it be stipulated that these are continuing objections as Mr. Kistler mentioned before to anything that Buddy said.

Mr. Morehart: Sure, sure, be glad to.

The Court: Yes, we'll stipulate that.

Mr. Supman: All right. That'll prevent our interrupting the witness.

The Court: And objection overruled.

(Ten Minute Recess to Change Tape)

Mr. Morehart: I think that where we finished on your testimony, where we quit on your testimony was where Dr. Kersell had been there and made his examination, and the pictures had been taken, and the bed removed. Is that right?

A. Yes.

Q. I think then you made some statement that you talked with Mr. and Mrs. Whittington and to Buddy, is that right?

A. That's right.

Q. All right. Now will you tell us when this was and what was said please?

Mr. Supman: Excuse me. Because of the end of the other tape——

The Court: You're making an objection?

Mr. Supman: Only because I was afraid at the end of [Tr. 249] the other tape, that wasn't in the record.

The Court: Yes, we've got the objection.

Mr. Supman: Continued objection without having to repeat them as to anything Buddy Whittington said.

Mr. Morehart: All right.

A. I asked Buddy if he were there all morning, and he said "Yes." And I asked him if he was alone, and he said, "Yes". I asked him if he had seen Mrs. Willard, and Buddy stated yes, she had come to the door about eight o'clock, returned the curlers and left, but he did not know where she went.

Q. By the way, did you see these curlers?

A. Yes, I saw the curlers.

Q. Where were they at the time you saw them?

A. They were in the kitchen.

Q. In the kitchen, and what room is that, in what direction?

A. It's the west room.

Q. The west room, and just for the purpose of the record, here, can you give us the floor plan of the house of Mr. and Mrs. O. A. Whittington?

A. The north half of the house is bedroom and bathroom space.

Q. How many bedrooms?

A. Three.

[Tr. 250] Q. Three bedrooms.

A. Three bedrooms. The rear bedroom, I presume, is Mr. and Mrs. Whittington's. The next bedroom is Buddy's, and then it comes out of Buddy's into a small hall and into the bathroom, and continues on out the hall into the front bedroom.

Q. I see. All right.

A. The kitchen is at the west end of the house.

Q. That would be the southwest?

A. Southwest corner.

Q. All right.

A. The next room, they were using, I presume, as a living room. Of course, there's a large archway between the two, and it could be combined into one; and, of course, the front room would be a combination of the two.

Q. Of the living quarters?

A. Yes.

Q. Did you have any further conversation with Buddy Whittington at that time?

A. Yes. I asked Buddy if he were there all day, and he said he'd been out part of the day hunting Mrs. Willard; and, in fact, he said all day, about all day he had been hunting Mrs. Willard. And I made the statement that we were not called—she was not officially reported missing until three o'clock. Buddy stated he was out long before that and [Tr. 251] mentioned 11:30.

Q. You mean, mentioned 11:30?

A. Mentioned that he had been hunting her.

Q. Since 11:30?

A. Since about 11:30.

Q. All right.

A. At the time, I believe, Mrs. Whittington stated she couldn't understand. Buddy had been—had never been left alone more than one hour at a time until that particular day. Of course, she told us that Buddy was supposed to have gone to school that morning, and he didn't go to school, he stated, because he was sick. And he helped hunt then, and he helped me in the afternoon, I'd say approximately four o'clock, when I ran into the boys.

Q. Did you ascertain what time the Whittingtons had left that morning?

A. From my understanding, it was approximately 7:30.

Q. Who did you get this from? Where did you learn this?

A. I learned it there that day. I'm not going to say any particular person because I don't know. Buddy stated they had left that morning early.

Q. Did he say what he did after they left?

A. Why, Buddy stated he went in and lay down on the bed after they left and turned on his record player.

[Tr. 252] Q. And he told you that he did not go to school because he was ill?

A. Because he was ill.

Q. Do you know what time he was supposed to go to school?

A. He was to be in class at 8:30.

Q. At 8:30. Did you learn from him what time he would usually, normally leave to go to school?

A. No, I didn't ask him what time he would leave to get there.

Q. How far is this from the schoolhouse?

A. About two blocks.

Q. It's close?

A. It's close, real close.

Q. What if anything further did you do in regard to this investigation?

A. I think about that time, you and Mr. Rutherford were there. Of course, I continued my investigation as to trying to find out the details and so forth. But I'm pretty sure that that's about all the questioning, outside of when I came out of the bedroom, Mr. Whittington was standing in the little hallway next to the bedroom. But I've known him for years and years and always called him Bud, and I asked Bud if he knew what might have happened, and Bud stated, "I don't know, unless this boy." Buddy was standing [Tr. 253] right beside him.

Mr. Supman: Unless it's what?

A. Unless this boy.

Mr. Supman: "Unless this boy"?

A. That's right.

Mr. Morehart: Anything further you did Mr. Phillips in regard to this investigation?

A. You mean, this particular night or any time since?

Q. Or any time since, anything further that you did in the way of this investigation.

A. I have talked with neighbors, mostly neighbors, and I've been in to Columbus and checked a few people that had been—In fact, I checked the Willard family, the entire family, Mr. Willard, Jack, Dick, as to where they were and checked their alibis out. I was in Columbus Wednesday and rechecked an alibi on Jack Willard. I was out last night and rechecked an alibi on Herman Willard.

Q. Did you learn where Herman Willard was during the morning hours of July the 29th?

A. I did.

Q. What did you learn?

A. Herman Willard is employed by Adam Poff on a farm about a half mile north of Baltimore. Mr. Poff stated that Mr. Willard was there as usual at six o'clock, which is working time, at his home where he lives. He was there [Tr. 254] until approximately 12:30 of that date. Mr. Poff stated that he sent Herman to Millersport to the farm home of his mother-in-law to check the sweetcorn, to see if it was ready to use and told him to continue on over, back to County Road 46, north of 264, to the home of his father where they worked all afternoon, until he received a call that Mrs. Willard was missing and he came in.

Q. Did you have occasion to check the whereabouts of Jack Willard?

A. I did.

Q. On that morning?

A. I did, yes.

Q. What did your investigation disclose?

A. I made a trip into Columbus, at the employment of Mr. Willard, which is Columbus Army Depot, and I talked with three people in the office of the building where he works. Those people stated that Mr. Willard was on duty that day all day except for maybe a period of twenty minutes when he'd be out into the building, and except for noon hour, until after three o'clock when he received word that his mother was missing. They—or he left there at approximately 3:30 to come home.

Q. I assume, Mr. Phillips, that you have run down a lot of rumors and so forth——

A. I have.

[Tr. 255] Q. —that you have heard and checked those out?

A. Yes, I have.

Q. Have you learned or did you make any effort to determine from the neighbors and so forth whether there were any strange people in the neighborhood up there that day?

A. Yes, I have. I have found nobody in the community who seemed strange at all.

Q. Would you know, Mr. Phillips, in checking the people of the community or any of the neighbors and so forth, did you find anybody who saw Mrs. Willard, Gladys Willard, alive after eight o'clock in the morning?

A. No.

Q. Anybody at all?

A. No.

Mr. Morehart: You may cross examine.

Cross-examination.

By Mr. Kistler:

Q. Mr. Phillips, you say you've known Mr. and Mrs. Whittington for several years?

A. Yes.

Q. What kind of people have you found them to be in the years that you've known them?

A. I've known Bud Whittington for many years, I'll say it that way.

[Tr. 256] The Court: May I ask this. When you speak of Bud Whittington, is that——

A. That's Mr. Whittington.

Mr. Kistler: O. A. Whittington.

The Court: Senior. Sitting at the end. I just don't want to be confused.

A. He's been known as Bud ever since I can remember. I've known him a good many years, and I've found nothing wrong with him whatsoever.

Mr. Kistler: Are they church-going people?

A. They are.

Q. And you've known Buddy as distinguished from the father?

A. I've known Buddy, yes sir.

Q. What is his reputation in the community?

A. I've never had a minute's trouble with Buddy; let's put it that way.

Q. Mr. Phillips, you did investigate this matter after the body was found? Tell us if you learned in your investigation the time that the garbageman was there in the community on this date.

A. Yes, I did.

Q. All right. When was that?

A. Around seven o'clock. It might have been a little before that.

[Tr. 257] Q. Who was the garbageman?

A. Mr. North.

Q. Now, was that on the 29th?

A. That was on the 29th.

Q. The 29th, and did anyone see him leave the vicinity——

A. There were three of them.

Q. —leave the vicinity of the Whittington home and the Willard home?

A. The Willard home, yes. I didn't see them back, or didn't hear about the Whittington home, or, yes that's right, the Whittington home.

Q. Don't you know what time the garbageman came to each of the two homes?

A. I know what time he came to the other homes, yes.

Q. To which one?

A. To the Willard home and on the other street. He came up the alley a short distance.

Q. What time did he come?

A. Approximately seven o'clock.

Q. Did anyone see him come to the Whittington home on this day?

A. I didn't no, or nobody else that I know of did.

Q. Is there an alley back of the Whittington home?

A. There is.

Q. Mr. Phillips, in your investigation did you learn [Tr. 258] that Mrs. Willard had a dog that would follow her wherever she'd go?

A. If it wasn't tied, yes.

Q. On this day in question, did you find the dog?

A. Yes.

Q. Where did you find the dog?

A. I found the dog up along the railroad with the rope chewed.

Q. All right, and did you at any time learn that the dog had been tied over at Bondurants?

A. No, I did not.

Q. No one brought that to your attention?

A. No.

Q. In your investigation, did you determine what time Mr. Willard left the home?

A. Yes.

Q. What time did he leave?

A. 6:50 or 5:50 rather. He was to work at six o'clock.

Q. Did you not also learn from your investigation that he returned back to the vicinity at approximately 8:16 on the 29th?

A. Mr. Willard?

Q. Mr. Willard.

A. No, I did not.

Q. Didn't you learn that his car with him in it was [Tr. 259] seen right there about that time?

A. Now, who have you reference to?

Q. Either at the Whittington home or the Willard home?

A. Who have you reference to?

Q. Mr. Willard.

A. There are two Mr. Willards.

Q. What I mean,—all right, either one of them?

A. No. No.

Q. All right. In your investigation, did you find that on the 29th, or did you learn that Jack Willard was over in the Whittington yard on three different occasions in the morning?

A. No.

Q. Did you learn from your investigation that he picked up something from the Whittington yard on the morning of the 29th?

A. No.

Q. When you went into the Whittington home after being called and told that the body was there, was there anything at all disturbed in the home?

A. Nothing that I seen, no.

Q. Was it your opinion that—strike that. Could it be that Mrs. Willard met her death someplace outside the Whittington home?

[Tr. 260] A. To my knowledge, no.

Q. Would it be possible?

A. Nearly impossible.

Q. Would it be possible though?

A. It could be but how——

Q. Was the body stiff when you first saw it?

A. Yes.

Q. So that it had been there for quite some time?

A. Quite some time.

Q. Do you think the body was placed under the bed?

A. I'm positive it was.

Q. Or do you feel that the body was placed and then the bed put over the body?

A. Well, no. I feel it was put under the bed.

Q. Do you think—from your investigation, where do you think the death occurred?

A. In the Whittington home.

Q. Where in the Whittington home?

A. That I'm not going to say. I don't know. That I don't know.

Q. Some time ago, you made a statement that someone said something that they didn't know how anything happened unless it was the boy. Who made that statement?

A. O. A. Whittington.

Q. The father you mean?

[Tr. 261] A. The father.

Q. Mr. Phillips, did you make an investigation to find out where Mr. and Mrs. Whittington, the parents of the defendant, were during this day?

A. I was told that they had gone to Canton by the neighbors there.

Q. Did you check to determine if they had gone to Canton?

A. Only through the neighbors. I didn't check with Mr. or Mrs. Whittington.

Q. You don't know of your own knowledge whether they went to Canton or not?

A. No. I don't know that it would make me any difference where they were as long as they were gone.

Mr. Kistler: Nothing further.

Mr. Morehart: We may want to recall this witness later.

The Court: All right. You understand, you're not to leave, Mr. Phillips.

Mr. Morehart: Your Honor, before I go any farther here, and before I forget it, I would like to offer into evidence State's Exhibits 1, 2, 3, and 4, which are the photographs, which I think have been properly identified.

Mr. Kistler: We wish to object to the introduction.

[Tr. 262] The Court: What's the basis of the objection?

Mr. Kistler: The photographer testified that when he arrived, others had been there and so that it would be possible that the body and anything shown in there might have been changed from what it was prior to the time these pictures were taken. Furthermore, it shows in the picture, the two bodies, or the feet and part of the limbs of two possible witnesses and in the——

The Court: What's that got to do with it? You mean in one of the pictures, they don't have one end of the body, and in another picture, they have the other end of the body?

Mr. Kistler: No. There's two other men shown in the picture.

The Court: And they have been identified here as being in here and were witnesses, is that right?

Mr. Kistler: We're objecting to the pictures showing these two witnesses who have testified.

The Court: What is the basis of your objection? I think the testimony was that this was the body and it hadn't been moved. That's my recollection of this testimony. That's just the way it was.

Mr. Kistler: He said he couldn't say about that.

The Court: Who said?

Mr. Morehart: Well, of course, he couldn't swear it hadn't been moved before he got there, but he testified [Tr. 263] this was what it was at the time he saw it.

The Court: Well, there might possibly be some other witness here prior to the testimony of—you're referring to whose testimony, Mr. Kistler?

Mr. Kistler: The photographer.

The Court: The photographer. Well, I think the coroner testified as to these pictures and the sameness of the body

and the condition of the bed when he was there, am I right?

Mr. Morehart: So did Mr. Phillips.

The Court: Did Mr. Phillips?

Mr. Morehart: Oh, indeed so.

The Court: I think there's been identity of these.

Motion overruled. They will be accepted into evidence.

WILLIAM RUTHERFORD, being first duly sworn, as provided by law, was examined and testified as follows:

Direct Examination.

By Mr. Morehart:

Q. Will you state your name please?

A. William Rutherford.

Q. Where do you live?

A. Bremen, Ohio.

Q. What is your occupation or profession?

[Tr. 264] A. Probation Officer in the Juvenile Court of Fairfield County.

Q. How long have you been Probation Officer in the Juvenile Court?

A. It will be twelve years in February.

Q. That has been—you've been on this job continuously, I presume?

A. Yes sir.

Q. Did you have occasion to be called to the Village of Baltimore on or about the evening of July 29th of this year?

A. Yes sir, I did.

Q. And do you know who called you?

A. Yes sir. Jerry Hampson, Deputy Sheriff in the Sheriff's Department, called me by phone.

Q. Did you go to Baltimore?

A. Yes sir, I did.

Q. Where did you go?

A. I went to Fremont Street, the home of Mr. and Mrs. Orville Whittington.

Q. Where is that located, in what Village and what County and State?

A. It's in the Village of Baltimore, in Fairfield County, here in the State of Ohio. Fremont Street, to me, is in the western part of the Village. I know it to be [Tr. 265] west of the Liberty Union School. I was instructed to go to the school and go to the second street to my right, and I would see the Sheriff's car sitting there and I would find it. I arrived there and inquired of a man standing on the sidewalk where the Whittingtons lived, and he told me, and I went to the back door.

Q. What did you do then?

A. When I arrived there, I went to the back door and the door, the screendoor, was locked. I knocked on the door, and Deputy Sheriff Berry came to the door and let me in. I found there Mr. and Mrs. Whittington. I was introduced to them; their son Buddy; yourself, Mr. Morehart, was there; Mr. Phillips, the Chief of Police of Baltimore; Mr. Berry, and other gentleman who I was introduced to and, I believe, it was a neighbor or a relative of the family, I'm not sure. I don't remember his name.

Q. What then did you do?

A. Well, at that time, I was told by yourself and by Deputy Berry as to what had happened. I did not know the circumstances, and I was informed by people present that Mrs. Willard, a lady who lived across the street, had been found, that she was dead. That she had been found after she'd been missing most of the day. She'd been found in the bedroom at the Whittington home under the bed.

Q. Did you inspect the bedroom?

[Tr. 266] A. Yes sir, I looked at the bedroom.

Q. You said that you saw Buddy Whittington there. Is he present here in the Courtroom?

A. Yes sir. This is Buddy right there. (witness indicates defendant.)

Q. All right. After you investigated the bedroom and you had talked to the officials present, what then did you do?

A. I talked with Buddy and his parents.

Q. Where did this take place?

A. This took place in the dining room, I would call it, of the Whittington home.

Q. Who was present at the time?

A. Mr. and Mrs. Orville Whittington and their son,

Buddy; Mr. Morehart, the Prosecuting Attorney; the Chief of Police, Mr. Phillips of Baltimore; Mr. Berry, the Deputy Sheriff; and this other gentleman. I don't recall his name.

Q. Do you recall what the conversation was?

A. Yes. The conversation was started out as to where the Whittingtons had been that day, and the conversation was with Mr. Whittington and Mrs. Whittington and the boy. I don't recall whether it was Mr. Whittington or Mrs. Whittington, I believe it was Mr. Whittington, told me that they had gone to Canton to visit some friends or relatives that day and had left in the morning around 7:30 and had [Tr. 267] returned in the evening around the supper hour, sometime—I don't recall exactly what time they returned home, whether they told me or not. In talking with Buddy, he told me he got up that morning and dressed, and was going to go to school; but that after his parents left, he felt ill and he didn't go to school. And I was informed at that time that he attended a summer class at the Liberty Union School, or the Liberty Union High School, taking a course in mathematics, and he didn't go to school because he felt ill.

Q. Did he tell you the nature of his illness?

A. He said he had a stomach-ache.

Q. Any other conversation?

A. Yes. I asked him if he'd seen Mrs. Willard that day, and he told me that he had. That sometime about eight o'clock, she come to the door to return some curlers that his mother had loaned her, or used in fixing Mrs. Willard's hair.

Q. Did he say what door she came to?

A. Said she came to the rear door, and he said he didn't recall just exactly what she said, but she said something like, "You-Who, anybody home?" Something like that. He just didn't recall exactly what it was, but he got up and went to the door. She handed him the curlers and he laid them there on the chair, I believe, or the table. I believe, it was the chair. And she turned and walked away. [Tr. 268] He said he didn't know which way she went, that he went back and lay down on the bed.

Q. Did you have any further conversation with him?

A. Yes. I asked Buddy if he had any idea of how Mrs. Willard's body had got under the bed, and he said he didn't know anything about it. I asked him if he had seen

anybody else around the neighborhood that day, if there had been anybody come to the door, if there was anybody in the house; he said he hadn't seen anybody. I asked him if he'd left the house in the morning, and he said he'd left some time close to noon. He didn't know exactly what time it was. He thought it was sometime right after eleven o'clock, but he wasn't sure. He said he left after a lady came who was a sister of Mrs. Willard and told him that Mrs. Willard was missing. Then, I think, he said he changed his clothes and went to the berry patch to look for Mrs. Willard.

Q. Did he tell you how long he waited there after the woman came to the door before he left?

A. It was some period of time. I don't recall exactly, but it runs in my mind, thirty, forty minutes, something like that. I don't recall. I recall him saying it wasn't right away. He didn't get up and go right away, but he waited and changed clothes and it was a little period of time before he left. But not too awful long. It [Tr. 269] wasn't immediately. He told me, but I just don't recall exactly. But I think he said thirty, forty minutes, something like that.

Q. That's after the woman had been there inquiring?

A. After the lady come and told him. I asked him—he told me he'd gone to look for her, and I asked him how he knew she was missing. And he said this lady had come and told him, asked if she was at the house and asked him if he knew anything about her, that she'd been missing. They couldn't find her. He then said that he went to look for her, and in the afternoon after he'd looked for her, looked in the berry patch, then he came back and went to baseball practice.

Q. Did—In your investigation, did you learn of any strange person or any other person being around the Whittington or Willard home any time during that day?

A. No. sir.

Mr. Morehart: You may cross examine.

Mr. Kistler: No questions if the Court please.

ELWOOD PHILLIPS.

Re-direct examination.

By Mr. Morehart:

Q. You recognize, of course, that you're still under oath?
A. I do.
[Tr. 270] Q. Mr. Phillips, are you acquainted with a man by the name of Richard or Dick Willard?
A. I am.
Q. Where does he live?
A. He lives next door to Mrs. Gladys Willard.
Q. Immediately which direction?
A. North.
Q. Immediately north. What's his wife's name?
A. Lula.
Q. Lula. You've seen his wife here today, I assume?
A. I did.
Q. Testified as a witness. Mr. Phillips, did you have occasion to check out the whereabouts of Richard or Dick Willard——
A. I did.
Q. —on the morning of July 29th?
A. I did.
Q. What did you ascertain?
A. Mr. Willard, Dick Willard, goes to work early in the morning. I think, about seven o'clock and works until 3:30. He gets a half hour for lunch.
Q. Where does he work?
A. Gaylord Container. Paper company, up there. And he quits at 3:30. He was on the job the entire day, according to his boss, Robert Getz. The only time, he was gone [Tr. 271] was to come home, which he has a half hour at noon for lunch, from 11:30 to 12 o'clock.
Q. In other words, in a half hour's time, he has to come home, eat his lunch, and go back?
A. That's right. One-half hour.
Q. He was at work all day?
A. He was at work all day that day, that's right.

Mr. Morehart: That's all. You may cross examine.
Mr. Supman: No questions.

The Court: Now, are you through with this witness?
Mr. Morehart: Yes, I think so.

(Witness excused).

ORVILLE A. WHITTINGTON, being first duly sworn, as provided by law, was examined and testified as follows:

Direct examination.

By Mr. Morehart:

Q. Will you state your name please?
A. Orville Arthur Whittington.
Q. And you live on Fremont in Baltimore, is that correct?
A. 215 Fremont, Baltimore.
Q. And you are the husband of Ollie Whittington——
A. That's right.
[Tr. 272] Q. —and the father of Buddy Whittington, is that correct sir?
A. Yes sir.
Q. And if I'm not mistaken, I think you are retired, is that correct?
A. That's right.
Q. Directing your attention, Mr. Whittington, to the 29th day of July of this year, where were you?
A. We went to Canton to see my sister.
Q. When did you go to Canton? When did you leave?
A. Somewhere around twenty minutes or 7:30.
Q. You mean twenty minutes after seven or 7:30?
A. Yes.
Q. Did anyone go with you?
A. My wife.
Q. Anyone besides your wife?
A. No.
Q. How did you go?
A. I drove my automobile.
Q. What kind of car do you have?
A. A Rambler, a white one.
Q. When you left at—in the morning, was your son, Buddy, up?
A. Yes, he was.

Q. How long had he been up, do you know?

[Tr. 273] A. Just a few minutes, I would say. I just couldn't tell you.

Q. Did you eat breakfast before you left?

A. Yes sir.

Q. Did your son eat breakfast before you left? Did he eat breakfast with you?

A. I don't think he did. I'm not positive, but I don't think he did.

Q. Why was your son up, do you know, before you left?

A. It could have been my wife might have called him to get ready for school.

Q. I see. Your son was in school?

A. Yes.

Q. Where did he go to school?

A. Liberty Union.

Q. What time was he due to go to school? What time did he have to be at school?

A. I think at 8:30, but he usually left about a quarter after.

Q. About a quarter after eight?

A. Yes.

Q. It's not very far from your home to the school, is it?

A. About a couple of blocks maybe.

Q. Had he been going to school regularly?

[Tr. 274] A. Yes sir. He went regularly except for two days, I think, he went to camp. He missed two days.

Q. Was that to a church school of some kind?

A. Yes.

Q. And he was excused for that?

Buddy Whittington: It was 4-H.

A. It was 4-H Camp. He went to 4-H.

Q. Oh, 4-H Camp. Now, Mr. Whittington, was there anyone else in your home when you left besides Buddy?

A. No, there weren't that I know anything about.

Q. I mean to your knowledge.

A. No.

Q. And when did you return?

A. Practically about the same time, about twenty minutes after or 7:30, around there. I don't know just exactly.

Q. Was your wife with you when you returned?

A. Yes sir.

Q. Anyone else?

A. No sir.

Q. Did you see any of the neighbors when you left that morning, Mr. Whittington?

A. I just don't recall seeing any of them, but my wife looked out the back glass, to see if she could see Mrs. Willard in the yard. She's always out about that time in [Tr. 275] the morning.

Q. You know whether she saw her or not?

A. She didn't see her that morning.

Q. She didn't see her that morning?

A. But I saw three garbagemen out front. They went down through there before we left.

Q. "Out front", when you say "out front", what do you mean, sir?

A. They went down the street in front of the house and picked up garbage at the next house down there.

Q. Which house would that be? Who lives there? Barbers?

A. Barbers, yes.

Q. Barbers. That's the house immediately north of yours?

A. Right straight across from the school.

Q. Immediately north of you on your side of the street?

A. Yes.

Q. The garbagemen had gone down through there?

A. That was about, oh I'd say around, seven o'clock. Just a few minutes before we left.

Q. And they went down through there at that time?

A. Yes.

Q. Now, Mr. Whittington, when you returned, what [Tr. 276] did you find, anything unusual there around your house?

A. There were a lot of people out there, and Phillips was there.

Q. Did you learn why they were there?

A. I did later, but I didn't right at the time. I figured the neighbors had been fussing.

Q. What did you learn, the reason for them being there?

A. They said Mrs. Willard was missing.

Q. Whom did you talk to?

A. I just can't rightly tell you. I think maybe my neighbor, Mrs. Mauger, was the first woman I talked to because she came out across the yard as soon as we got home and wanted to know if Mrs. Willard had gone with us that day.

Q. Oh, I see. She was wondering whether or not she'd gone with you?

A. Yes.

Q. Now, Mrs. Mauger lives immediately south of you, does she not?

A. Yes.

Q. On the same side of the street?

A. Yes.

Q. All right. I presume that you told Mrs. Mauger that she had not gone with you?

[Tr. 277] A. I did.

Q. What then did you do?

A. Well, I just don't rightly know, right away.

Q. Did you go in the house?

A. No. I went across the street and talked to some of the neighbors. I went over where they were.

Q. Did your wife go with you?

A. She probably went, but she wasn't right exactly with me.

Q. She didn't go in the house either?

A. No. I went across and I talked to Mr. Phillips, I think, and maybe Mr. Grile. And they were there with Mr. Willard, but I didn't talk to him. I just talked to the two.

Q. Mr. Grile, he's head of the Fire Department up there, isn't he?

A. Yes.

Q. Loy Grile, I believe his name is.

A. Yes.

The Court: I'd like to ask if this return was at 7:20 or 7:30 in the evening or was it at the time right after he left?

Mr. Morehart: No. I think he meant in the evening, did you not?

A. In the evening.

[Tr. 278] The Court: Then I didn't hear it. I just wanted to know.

A. Both times was about the same. Only one was in the morning, and one was in the evening.

The Court: You left in the morning and came back in the evening. Thank you. I just didn't hear that.

Mr. Morehart: When was the first time that you went in the house, Mr. Whittington, when you returned home that evening?

A. Well, I went and looked for the key, and the key wasn't there, or at least I didn't find it. And somebody said Buddy was at ball practice, which I would have known if I had given it a second thought. And I don't know who said it, but I went to the schoolhouse after him. And he had ridden his bicycle up there, and I asked him about the key, if he had it in his pocket, and he said, "No." So, he got on his bicycle and went home, and he got the key; and we unlocked and went in the house.

Q. Where was the key? Was it a different place from where you always keep it?

A. It was—There's a pipe hanger up there where we always put the key. I mean, in this space across there, and there's a little space about four inches, and he stuck it in there between the pipe hanger, which we always kept it over on the other side, or most of the time; and that's [Tr. 279] where I missed it. I just didn't look in that space.

Q. All right. Now when you went in the house, who went in?

A. Well, I think Buddy went in with me, and Brad went in with me, the neighbor boy there.

Q. Who is Brad?

A. That's the Reedy boy, Wayne Reedy's son. They live over on the other corner from us, right back of the Fire Department.

Q. How old is he?

A. He's about, I would say about, fifteen.

Q. And what was he doing there, do you know?

A. He'd been over helping hunt Mrs. Willard.

Q. Oh, I see.

A. We had a lot of stuff in the car, and him and Buddy helped me unload the automobile and we took the stuff all in the house.

Q. Did Mrs. Whittington go in the house with you at that time, also?

A. I don't believe she did. I'm almost positive she didn't right away, but I just don't know when.

Q. All right. After you took this in the house, then what did you do? Did you go back outside?

A. I went back outside.

Q. What did you do after you went back outside?

[Tr. 280] A. I run into Mrs. Mauger out there, and she said, "I searched my house every place." She said, "I went in and looked through my wardrobes", the closets in her house. I said, "Well, I'll go check the garage." You know, our garage is right there back of the house.

Q. Is this garage kept locked?

A. No.

Q. I see.

A. Of course, I went in there and looked, and I went from there in the house. I looked and went back out.

Q. Then what did you do, sir?

A. I fooled around outside awhile, and I got to thinking there could only been one place that I missed looking. So I went back and started looking under the beds.

Q. Did anybody go with you?

A. Yes, Buddy went along.

Q. Buddy went with you?

A. Yes.

Q. How many bedrooms do you have, Mr. Whittington?

A. Three.

Q. Three bedrooms, and where are they in relation to your house?

A. They're on the north side. They're in rotation. We sleep in the one to the west, and Buddy in the middle one, and the other——

[Tr. 281] The Court: May I ask a question. Is your home on the west side of this street?

A. Yes.

The Court: I see. I didn't go up to see this locale. Maybe I should have, but you live on the west side of the street, and the Willards live on the east side.

A. Yes sir.

The Court: And that's this street of Fremont, which runs north and south?

Mr. Morehart: Yes, right, Judge. It intersects Washing-

ton Street. Washington Street is the street that runs east and west.

The Court: Don't add too many because I get lost in Carroll.

Mr. Morehart: Well, that's the one that runs pass the schoolhouse, Judge, and Fremont is the one that runs north.

The Court: I've got it. I understand.

Mr. Morehart: Now, how did you check under the beds, will you tell us just what you did? Which bedroom did you start with?

A. I started with our bed.

Q. With your bedroom?

A. Yes. In the beginning, I never expected to find Mrs. Willard in the home like that.

Mr. Morehart: Well, I have no doubt about that, sir.

[Tr. 282] A. The reason I thought of it was because her and her husband had trouble, and Jack's there; and him and his wife have a lot of trouble. And I thought it was more than she could take, and I figured she would rather die in our house than in her own home.

Q. I see. That was what you maybe were thinking, why you would look, make such a thorough search of your house?

A. Yes.

Q. Now, when you went—Was Buddy with you when you checked the bedrooms?

A. Yes.

Q. Or did he check certain bedrooms and you check certain bedrooms?

A. No, he just went down there and looked in; and I looked under the one, and we went to the next one. And he went on over and walked up there to the end of the vanity, and he just stopped there.

Q. He walked up to the end of the vanity and stopped?

A. He was looking at some little model cars he's got there. He's got the whole top of it covered.

Q. Did he help you look under your bedroom, under your bed?

A. No. He didn't look. He just walked through. He goes with me every place I go.

Q. I see, and he was with you when you looked under [Tr. 283] the bed in your bedroom?

A. Yes.

Q. And you found nothing there?

A. No.

Q. You came out then to his bedroom then, which would be the next bedroom, and you say he walked up to the vanity and stops and starts looking at some little cars?

A. Yes.

Q. Now where did you look under this bed at? Where were you when you looked under this bed?

A. Just about middle-ways.

Q. On which side?

A. It would have been on the south side.

Q. On the south side; that's as you come into the bedroom, is it not?

A. Yes.

Q. Did you get down on your hands and knees?

A. Yes, I got down on my knees and pulled the spread up and——

Q. Were you able to see her at that time?

A. Yes sir.

Q. What did you say?

A. I just don't remember.

Q. What then did you do, right then?

A. I got up and went outside and called my wife, told [Tr. 284] her.

Q. Did you say anything to Buddy?

A. Yes, I said to him, I said something like, "Here she is under your bed."

Q. What did he say.

A. I just can't recall exactly what he said. He says, "Oh, no." or "Can't be" or something similar to that. And he knelt down and looked.

Q. Down beside you? Were you still bent down?

A. No. I had—he was standing over at the end of the bed, and I was still down at the side.

Q. Now did your wife come in then?

A. No. I went outside.

Q. You went outside?

A. Yes sir.

Q. And you called to her and you told her what you had found, I presume. Did Buddy go outside with you?

A. Well, I'm positive he did.

Q. What then did you do when you went outside? Did you tell your wife where other people could not hear or where they could?

A. Well, there were people around, I think. I just don't know how close or——

Q. Well what—Do you recall what you said to her?

A. I just hollered "Mom" at her a couple of times, and [Tr. 285] she came over, and I told her that I'd found her.

Q. Who else did you tell or what did you do?

A. I didn't do anything. Somebody else went and put the calls in, or whatever was did.

Q. I see. Did you go back in the house then?

A. Yes, I went back in with Phillips.

Q. Did you wait outside until Mr. Phillips came, is that what you did?

A. I just don't recall whether Phillips was right there at that time or not. Grile was there. He went in with me.

The Court: Who was that?

A. Grile.

Mr. Morehart: Loy Grile, the head of the Fire Department.

A. Yes, he's head of the Fire Department. He went in with me, and him and I were in there, but I don't recall just when Phillips did come in. It seems to me like he had went home for lunch, and they called him back.

Mr. Morehart: Do you know whether anyone else was at your house that day?

A. Not that I would know anything about.

Q. What is the size of this bedroom, do you know, sir?

A. I think it's 11 by 12.

Q. 11 by 12?

[Tr. 286] A. Yes sir.

Q. And what kind of a bed is there in there? Is it a single bed or a double bed?

A. It's full size bed.

Q. A full size bed, and what is normally under the bed, do you know?

A. Everything that a boy owns.

Q. In other words, he kept a lot of his playthings, toys and so forth, under the bed?

A. He had a little racetrack with these little cars. He keeps that under there all the time. Sometimes his ball glove or cap maybe, or there could be a dozen things under there.

Q. What articles of furniture are in the room besides the bed, Mr. Whittington?

A. There's the chest of drawers and the vanity.

Q. Now, where is the chest of drawers located?

A. It's at the foot of the bed.

Q. At the foot of the bed, all right.

A. And the vanity's over at the corner. It's on the north side.

Q. I see.

A. He has a little stand in front of the window, and he has a nightstand at the head of the bed.

Q. On which side? The nightstand, on which side?

[Tr. 287] A. It's on the north.

Q. North, I see.

A. The northwest corner of the bed.

Q. How many windows are there in this room?

A. One.

Q. One window. This is a ground level room, is that correct?

A. No, the back side is a little bit high.

Q. Well, I mean, it's on the first floor?

A. Yes.

The Court: May I ask this question. Is this a one-floor plan house?

A. No.

The Court: Well, you're talking about all the dining room and kitchen, and bedrooms. Is that all on one floor?

A. Yes, it's all on one floor, but we have an attic, a junk room above.

The Court: I see, that sort of gives me a picture.

Mr. Morehart: I think, you only use the ground floor for living, do you not, sir?

A. Yes.

Q. How many entrances are there to this house?

A. To the house?

Mr. Morehart: Yes.

[Tr. 288] A. Two. One door at the front and one at the back.

Q. Which door do you normally use?

A. The back door.

Q. The back door?

A. The back door is normally used.

Q. Do you keep the front door locked?

A. Most of the time it's locked.

Q. Do you know whether it was open that morning before you left, the front door?

A. That I couldn't say.

Q. Do you remember it being open?

A. No, I don't. I don't think I was out myself that morning. We have the door open, but we have the screen locked, the screendoor.

Q. You have a storm door on it?

A. Yes sir.

Q. And you keep that locked, is that right?

A. Yes.

Q. When you come in the back door, do you come directly into the house or onto a porch?

A. You come in onto a porch and into the kitchen.

Q. Is there a lock on that screendoor?

A. Yes, yes.

Q. Is it a storm door also?

A. Yes, but you just latch it from the inside.

[Tr. 289] Q. You latch it from the inside and that locks it?

A. We have a key for the other door.

Q. And then you have a key for the door that comes into the kitchen, is that right?

A. Yes, but there's no lock on the screendoor only when we're inside, the latch on it. But we have a key for the other door and the screendoor is not locked when we go away.

Q. No, it wouldn't be because you can only lock it from the inside.

A. We lock the other door.

Q. You lock the other door when you go away?

A. Yes.

Q. Let me ask you this. As you come in through the rear entrance-way, not the screendoor, but you're in on the porch and you're coming into the kitchen; as you come to

the kitchen then, do you turn immediately to your left to go into your bedroom?

A. Yes sir.

Q. Just as you come in the door, if you want to go into your bedroom from that way, you turn immediately left, is that right?

A. Yes sir. The door to the right goes to the basement.

Q. And the door to the right to the basement?

[Tr. 290] A. Yes.

Q. Mr. Whittington, when you found this body, do you recall approximately what time it was when you found her under this bed?

A. I couldn't tell you within—I don't believe I could tell you within a half an hour.

Q. Was it dark outside?

A. Sir?

Q. Was it dark outside?

A. No. It wasn't dark outside.

Q. Was it dusk?

A. Yes.

Q. I mean, would you need lights to see outside?

A. No. And you didn't need lights to see inside.

Mr. Morehart: Beg pardon.

A. You could see through the house. You didn't need lights inside.

Q. Did you turn on any lights when you went into the room, do you recall?

A. I just don't even remember whether I did or I didn't.

Q. I see. Mr. Whittington, to your knowledge, did anyone move this body from the time you saw it under the bed until after Mr. Phillips came and Mr. Grile? Did anyone move the body to your knowledge?

[Tr. 291] A. That I wouldn't know because when they handed me the covers and things off the bed, I left. I didn't stay any longer.

Q. No, I mean, before they came. Up until they came, from the time you found the body up to the time they came, to your knowledge, did anyone move the body?

A. No, I'm positive of that.

Q. You didn't move the body?

A. No sir. I never touched it.

Q. You never touched it? Was there anything in disarray in the boy's room, to your knowledge?

A. There was nothing no place that I ever could find.

Q. That was out of place or upset or turned over, anything like that?

A. Not one thing that I ever saw any place.

Q. Did you observe Mr. Whittington, when you first looked into the room, and I think that this was on the first occasion that you went through the rooms and looked for her, isn't that true?

A. Yes.

Q. A few minutes earlier you had gone through the house looking in closets, I suppose, and so forth. Did you look in the bedroom at that time?

A. No, I didn't.

Q. You didn't look in the bedroom?

[Tr. 292] A. I looked in the bedroom, but I didn't look under the bed.

Q. But you didn't look under the bed, no. But did you observe whether or not the bed was made when you were there? When you were looking through the room, did you observe whether or not the bed was made, do you recall?

A. I'm sure it was. I couldn't say how much or anything, but it wasn't messed up or anything like that. I mean, to any certain extent or anything, not noticeable.

Q. Nothing that would attract your attention?

A. No sir.

Mr. Morehart: I think that's all.

Cross-examination.

By Mr. Supman:

Q. Mr. Whittington, do you and Mrs. Whittington own this home?

A. Yes sir.

Q. And the contents?

A. Yes sir.

Q. Have you ever had any trouble with Buddy?

A. Not one day.

Q. Ever been in any trouble?

A. No sir.

Q. Any problems in particular in school?

A. Well, he's a little slow in school, but we never [Tr. 293] had any trouble with him or anything like that.

Q. Had he always passed?

A. Sir?

Q. Had he always passed in his grades?

A. Yes sir.

Q. And he was taking a math course I believe this summer, is that right, sir?

A. Yes, he was a little bit behind.

Q. You heard the—last week when there was a hearing here, witnesses testifying about his attending church and Sunday School and Youth Fellowship regularly, is that right?

A. Yes sir.

Q. About what percent of the time did he attend church?

A. He, I think, he went maybe a couple of years that he never missed, had perfect attendance.

Q. In the last year or two?

A. Maybe three times in the last two years.

Q. Did you ever have any trouble with him staying out late at night?

A. If he was out any later than nine o'clock, I'd remind him.

Q. Did you have any difficulty in that regard?

A. No sir. We always know where he was.

Q. You've said Buddy has never been in trouble. Is [Tr. 294] there anyone else in the neighborhood who has ever been convicted of a serious offense?

Mr. Morehart: Your Honor, I think I will have to object to this unless there's some connection here.

The Court: Objection sustained.

Mr. Supman: I would like to proffer into the record, that if permitted to answer, that the witness would be able to answer and he would answer that there's at least one or two other persons in the immediate neighborhood who has been convicted of an offense as serious as felony.

Mr. Supman: The key, Mr. Whittington——

The Court: Let me ask you if the proffered evidence would name those people?

Mr. Supman: One of which is Larry Bondurant.

Mr. Supman: The key that you found, where was this

with reference to the building? Was it inside or outside the building?

A. Where we kept the key?

Q. Yes, when you came home that evening.

A. Up in the corner of the patio.

Q. Was this outside?

A. Yes sir. It's underneath where the piece goes across. We just lay it up there in the corner.

Q. Is this, the location of this key, something that can be seen by other parties?

[Tr. 295] A. Yes. If you were tall, or I mean taller than I am. I can stand back a-ways and see the key.

Q. Could the placing or removing of this key, could that be seen by other people?

A. Yes.

Q. When Buddy was accompanying you through the house and looking when you were looking under the beds, how did he appear to you?

A. He was about as much surprised as I was, I think.

Q. Prior to the finding of the body, how did he appear to you?

A. He was shocked about it. I could tell.

Q. That was after you found it, but beforehand, was his appearance out of order?

A. No, he was just as normal as he could be, to my knowledge.

Q. Now, you stated that Mr. and Mrs. Willard, that's Gladys Willard, the deceased, and Mr. Willard had been having trouble? How did you know of this?

A. We can hear them.

Q. You can hear them?

A. Yes sir. On an average of twice a week.

Q. Where would you be when you'd be knowing about this trouble?

Q. You can hear it from most any room in the house, [Tr. 296] from the bathroom, from the front, or most anywhere.

Q. Where would they be at the time of this noise?

A. They would be outside. He would be coming outside. He keeps his car down in the street, and lots of times she would follow him clear down to the corner.

Q. What time of morning or evening would this occur as you saw it?

A. It would be in the morning when he was going to work.

Q. Over what period of time have you been observing or hearing this difficulty?

A. It's been going on for, I would say, two years, off and on.

Q. Do you know if the deceased had ever threatened to leave her husband?

A. I heard that, but I don't know anything about it.

Q. Do you know on the day in question, the 29th of July, if Buddy left the house that morning?

A. Only what he said.

Q. And what did he say with reference to that?

A. He said he was over at Kerns', that's over on the other corner. That would be three lots down. He goes back in the alley and goes up. It's the second house, would be the third one, there's an empty lot right there. It's the second house up on the corner.

[Tr. 297] Q. When did he tell you he left the house that morning, does he know? Do you know?

A. No. He didn't state no specific time he left, but he was there; and he was back in the backyard with his B-B gun, he said, at the berry patch.

Q. Now with reference to the Kerns' property and in that berry patch, could the back door of your house be seen from either these two locations?

A. No.

Q. What is the obstruction?

A. The garage sits there, and there's a pine tree at the corner of the garage. And that's all you can see, just up the side and straight to the back.

Q. So that there would be a period of time then when the back door would not be in view of Buddy during that morning according to what he told you?

A. Yes sir.

Q. Do you have a cistern on your back porch?

A. Yes, on the back porch.

Q. How large is that cistern?

A. Oh, about 6 to 8 by 6, I imagine. It's square.

Q. Is there anything in that cistern?

A. No.

Q. Is there an opening to that cistern?

A. Yes, on the porch.

[Tr. 298] Q. Can that be opened and closed at will?

A. Yes. I even looked in there myself.

Q. Do you recall a conversation with Mr. Phillips in which you may have been asked as to what you may know or how this may have occurred, do you remember that conversation?

A. No, I don't. I think a lot of things went on that I just can't recall because——

Q. At any time to your knowledge, did you ever—Did Mr. Phillips or anybody else ever accuse Buddy of this offense?

A. Well, this other guy—what's his name?

Mr. Supman: Rutherford?

A. Rutherford. I would say he accused him at one time.

Q. Did you ever accuse your son?

A. No. I did ask him maybe one time if he'd done that or if he knew anything about it, and he said, "No." Which I think that was my duty.

Q. He has maintained that position with you?

A. Yes sir.

Mr. Supman: No further questions.

Mr. Morehart: I think that's all.

(Witness excused).

[Tr. 299] The Court: You're through? That's your case?

Mr. Morehart: Yes. We had subpoened Mrs. Whittington, but we've decided not to call her. We will rest.

Mr. Kistler: At this time, we do wish on behalf of the defendant to move for a dismissal of the complaint.

The Court: On what basis?

Mr. Kistler: On the basis, if the Court please, that the charge is delinquency, and that delinquency has not been proven. The definition of delinquency is as follows, "A delinquent child includes any child, One, who violates any law of Ohio, or the United States, or any ordinance or regulation of a subdivision of Ohio, except as provided in regard to juvenile traffic offenders. B, who does not subject himself to reasonable control of his parents, teachers, guardian, or custodian by reason of being wayward or

habitually disobedient. C, who is habitually truant from home or school. D, who so deports himself as to injure, endanger the morals or health of himself or others, or, E, who attempts to enter the marriage relation in any state without the consent [Tr. 300] of his parents, custodian, legal guardian, or other legal authority." If the Court please, certainly it cannot be contended by anyone that he attempted to enter the marriage relation or——

The Court: Well, let's not be facetious. This has nothing to do with the marriage relation. Let's get to the point.

Mr. Kistler: I'm sorry.

The Court: There's been a charge that this boy killed this lady, that's the delinquency that's alleged, that he's charged with. Now, we've had the hearing, and now what's your Motion for to that?

Mr. Kistler: As I started to say, there would be only one possible delinquency question here and that would be whether or not he violated any law of Ohio or the United States or any ordinance or regulation of a subdivision of Ohio. There's no evidence in this world to connect this boy with this body that was found in this home, the property owned by Mr. and Mrs. Whittington. The law clothes a defendant with a presumption of innocence, and here there is no evidence, no one, no evidence in any way, to say, to connect this boy with the death of this lady. [Tr. 301] On the other hand, there is evidence, a lot of evidence, that the boy and the lady got along well together, were good friends and had been for many years. The evidence, however, is that there was quarreling continuously between this man and his wife, or at least a lot of quarreling that was heard. The husband in this case testified and answered twice that he came back in the locality of his home at 8:16 a.m. on the morning on this day in question. The testimony furthermore was that he knew that the Whittingtons were gone from the home. Now in this case, the testimony was that the boy was gone. He was in the blackberry patch, and you can't see the back door from the blackberry patch. And that he was over visiting at the neighbors in the morning and from there, you can't see the back door. That he was gone out searching along with Boy Scouts and different ones. The testimony was further that he was playing ball with the team in the afternoon. Testimony was that

anyone could have seen the key to the door to the home at any time from where it was placed. It would have—To connect this boy in any way with this whole matter is just unthinkable. The testimony was that Mrs. Whittington did the [Tr. 302] hair of the decedent the night before and that this morning, the boy heard, the defendant heard, a knocking at the door and that she returned some curlers. And he said, "Thank you", and she walked away, and that's the last he ever saw her until in the evening when the body was found.

The Court: Do you have anything to say Mr. Morehart at this time?

Mr. Morehart: Your Honor, I think the evidence is sufficiently clear. I realize that it is circumstantial, but sometimes circumstantial evidence is the strongest evidence really. It won't lie, your Honor. I don't think that I need to say any more to take up the Court's time. It's late.

The Court: All right. The Court is going to retire with his stenographers here for—Is there any reason why you cannot wait until I can return a verdict about this matter?

Mr. Morehart: Your Honor, I think they want a ruling on the Motion first.

The Court: The ruling is going to be reserved until I retire and check with my stenographers on some testimony given.

Mr. Supman: Your Honor, we would like [Tr. 303] to make a stipulation here. Let the record show that by agreement of the parties that——

The Court: The stipulation of counsel for the defendant

Mr. Supman: And by the stipulation of counsel, that there will be no evidence presented by the defendant until the Court has ruled on the Motion to Dismiss. Of course, then if the Motion is sustained, there would have been no need for any evidence; that, if the Motion is overruled, that then, in the interest of time, the evidence of the defendant would consist, and by stipulation of counsel, it would be the same witnesses who testified, which were approximately seven or eight in number, at the last Motion. And that it is stipulated that their testimony will then be considered as having been testified to today as part of this hearing.

The Court: And the Court will so consider it.
Mr. Morehart: I'll agree to that stipulation.

(Ten Minute Recess).

The Court: All right. The Court [Tr. 304] overrules the Motion to Dismiss. And the Court will then consider the evidence that you presented the other day and has considered it.

Mr. Kistler: Your Honor, may we then make at this point, renew our Motion for the Dismissal of the Complaint.

The Court: That's overruled. What's the basis of that?

Mr. Kistler: If the Court please, now in addition to what was stated before that there was no evidence to establish that the defendant had violated any law of the State or United States or anything else. We have here a young man whose reputation is beyond question, a young man who is known in the community to be law abiding, a young man who has never been involved in any difficulty in any way, a young man who, the neighbors who know him best, cannot believe that he was in any way involved in anything in connection with this. We have the testimony of the minister who has known him and known him to be a boy who attended the church, the church activities. We have the testimony of the school teacher who has known him to be a fine young man, and we have the testimony of the neighbors who [Tr. 305] knew him quite well, who all said there's no risk in any way in connection with anything that this boy might do. He'd be welcome in our home. He's that type of a young man. Now, in view of the evidence that there is no, certainly no evidence of any kind to establish that he violated any law; and, in view of the fact of the type of young man that he is, there's every reason to dismiss this Complaint that has been filed.

The Court: Now the Court finds— That's overruled. The Court finds that there has been a crime committed here, that there has been a homicide committed on this alleged victim; and the Court finds that there is probable cause to believe that this young defendant may have done this act, which, if done by an adult, would be a felony. And, at this time, it is the order of the Court that the boy be examined, physical and mental examination be made of such child, by the Bureau of Juvenile Research, which, I think, is now called the Diagnostic Center of the Youth

Commission. And is Mr. Rutherford here? Would you call him please?

(Mr. Rutherford summoned by bailiff)

[Tr. 306] The Court: Mr. Rutherford, in furtherance of the finding of the Court which has just now ordered that a physical and medical examination be made by the Diagnostic Center of the Youth Commission, it is the further order of the Court that—the law requires, after full investigation, the Court ask you to make any further investigation that hasn't already been disclosed in here with regard to this young man and you'll report to the Court.

Mr. Rutherford: Your Honor, do I understand that he is to go to the Diagnostic Center?

The Court: That's right.

Mr. Rutherford: In so doing that, they request, in times past, that a social history accompany him on a temporary commitment there. And having not dealt with this family before, I wonder if it would be possible for me to talk with them.

The Court: Will counsel for the family have them cooperate with Mr. Rutherford so that can be sent along with the young man for their benefit?

Mr. Supman: Yes sir. And your Honor, may I add, one thing in furtherance of this. In order that he will not be unduly delayed in the incarceration in which he is being held and in light of the fact that Mr. Morehart is going to be going on vacation, could we draw this entry tomorrow morning before Mr. Morehart leaves so that he can be sent up to the Diagnostic Center that much sooner?

The Court: I'm happy to have it done at the earliest moment.

Mr. Supman: Could we have the secretaries type up the entry?

Mr. Morehart: This evening?

Mr. Supman: Yes, this evening.

Mr. Morehart: Well, I'll be here tomorrow.

Mr. Supman: But the Judge won't be here tomorrow; but, of course, he could sign it on Tuesday.

The Court: Well, I could be——

Mr. Morehart: They wouldn't take him until tomorrow anyway.

Mr. Supman: You'll have this for us tomorrow morning?

Mr. Morehart: I'll try to have the [Tr. 308] Entry for you tomorrow morning.

Mr. Supman: If you don't, will you remain in town until this is taken care of?

Mr. Morehart: Oh, definitely. Definitely.

Mr. Supman: And, Mr. Morehart, I assume the Entry will recite the wording of the Judge that he has probable cause to believe that the defendant committed this offense?

Mr. Morehart: Well, it's the Judge's Entry.

The Court: Whatever the Entry is. I think we've followed it in prior circumstances.

Mr. Rutherford: What time would counsel like to have Mr. and Mrs. Whittington come in to see us?

Mr. Supman: Any time.

Mr. Rutherford: Will you want to be there?

Mr. Supman: No.

The Court: Now you say, "any time", what——

Mr. Supman: No, I won't need to be present. You can talk with Mr. and Mrs. Whittington, probably they'd like to wait maybe [Tr. 309-313] until about Tuesday to try and get over this, Bill.

You co-operate with Mr. Rutherford, you understand, Mr. and Mrs. Whittington? If there's any difficulty, you let me know, Bill. I'm sure there won't be.

(Court Adjourned)

[Tr. 314] CERTIFICATE

COUNTY OF FAIRFIELD,
State of Ohio, ss:

I, Diana Jean Williard, Official Court Reporter for the Juvenile Court of Fairfield County, Ohio, duly appointed and qualified, do hereby certify that the foregoing is a true and complete transcript of all the proceedings, including all Exhibits and other evidence, had in Case No. 6183-J, in the Matter of Buddy Lynn Whittington, an Alleged Delinquent Child, in the Juvenile Court of Fairfield County, Ohio, on August 25, 1966, and on September 2, 1966.

Diana Jean Williard, Official Court Reporter.

TRANSCRIPT OF DOCKET AND JOURNAL ENTRIES

TO SUPREME COURT OF THE UNITED STATES OF AMERICA

Revised Code, Sec. 2505.08.09

COURT OF APPEALS OF FAIRFIELD COUNTY, OHIO

No. 421

IN THE MATTER OF

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

1966,	Sep. 12,	Notice of Appeal. C.B. 2, P. 166.
"	, Sep. 14,	Motion. C.B. 2, P. 166-167.
"	, Sep. 14,	Original Motion mailed to Judge Rutherford this date.
"	, Sep. 19,	Motion for Suspension of Execution of Sentence Pending Appeal. C.B. 2, P. 167.
"	, Sep. 20,	Motion. C.B. 2, P. 168.
"	, Sep. 20,	Transcript of Docket and Journal Entries and forty-three (43) papers from Juvenile Court, Lancaster, Ohio, Fair-Fairfield County.
"	, Sep. 20,	Memorandum in Opposition to Motion to Dismiss Appeal.
"	, Sep. 21,	Entry. Jr. 2, P. 136.
"	, Sep. 30,	Memo. Jr. 2, P. 136.
"	, Oct. 4,	Judgment Entry. Jr. 2, P. 137.
"	, Oct. 31,	Bill of Exceptions.
"	, Nov. 8,	Brief of Defendant-Appellant (Statement of the Case. C.B. 2, P. 172 to 175)
"	, Nov. 8,	Assignment of Errors. C.B. 2, P. 175-176.
"	, Nov. 14,	Motion for Order Fixing Appeal Bond. C.B. 2, P. 177.
"	, Nov. 16,	Journal Entry. Jr. 2, P. 138.
"	, Nov. 16,	Appeal Bond Filed and Approved. Ap. Bk. 2, P. 103.
"	, Nov. 23,	Appellee's Answer Brief.
"	, Nov. 29,	Appellant's Reply Brief.
"	, Nov. 29,	Application for Permission to File an Amicus Curiae Brief. C.B. 2, P. 177.
"	, Nov. 29,	Memorandum.
"	, Dec. 20,	Motion. C.B. 2, P. 178-179.

"	, Dec. 21,	Motion. C.B. 2, P. 179.
"	, Dec. 21,	Entry. Jr. 2, P. 148.
"	, Dec. 21,	Entry. Jr. 2, P. 148.
"	, Dec. 22,	Memorandum.
"	, Dec. 22,	Journal Entry. Jr. 2, P. 151.
"	, Dec. 23,	Precipe. C.B. 2, P. 179.
"	, Dec. 23,	Order to Serve issued to the Sheriff of Fairfield County.
"	, Dec. 23,	Order to Serve Returned Endorsed. December 23, 1966, I served the within named Robert U. Hastings Juvenile Judge of Fairfield County, Ohio personally with the certified copy of Journal Entry filed December 22nd., 1966, at 4:03 o'clock P.M. herewith, as by this order I am commanded. Jack Blazer, Sheriff By Margaret M. Olive, Deputy (Served by B. Andrus)
1967, Jan.	3,	Memorandum. Jr. 2, P. 152 to 160.
"	, Jan. 16,	Notice of Appeal. C.B. 2, P. 180.
"	, Jan. 16,	Entry. Jr. 2, P. 162.
"	, Jan. 24,	Entry. Jr. 2, P. 164-165.
1967, Mar.	23,	Precipe. C.B. 2, P. 188-189.

COURT OF APPEALS OF FAIRFIELD COUNTY, OHIO

No. 421

IN THE MATTER OF
BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

NOTICE OF APPEAL

Buddy Lynn Whittington, a minor 14 years of age, defendant-appellant, gives Notice of his Appeal to the Court of Appeals of Fairfield County Ohio, from the order and final judgment made and entered herein in the above entitled cause on the 7th day of September, 1966 whereby the Court found the defendant to be a delinquent child as set forth in the complaint. Said Appeal is on questions of law.

Jack Supman, Judson C. Kistler,
Attorneys for Defendant-Appellant, Buddy Lynn Whittington, a minor 14 years of age

Copy mailed to E. Raymond Morehart, Prosecuting Attorney for Plaintiff-Appellee, this 12th day of September, 1966.

Jack Supman, Judson C. Kistler,
Attorneys for Defendant-Appellant, Buddy Lynn Whittington, a minor 14 years of age

IN THE COURT OF APPEALS, FIFTH APPELLATE DISTRICT,
FAIRFIELD COUNTY, OHIO

No. 421

IN THE MATTER OF

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

MOTION

Now comes the defendant, Buddy Lynn Whittington, a minor 14 years of age, he having reached the age of 14 years on July 23rd, 1966 and moves the Court that he be released to the custody of his parents pending the appeal herein or be released on bond in an amount fixed by the Court.

In this said cause the defendant was confined on August 5th, 1966 in solitary confinement in an antiquated iron cell and cage where he has been confined until September 12th, 1966 at approximately 1:00 o'clock P.M. when he was committed to the Juvenile Diagnostic Center of the Ohio Youth Commission for a complete mental and physical examination.

That on the 24th day of August, 1966 the defendant, Buddy Lynn Whittington, filed a written Motion in the Juvenile Court praying and begging that he be admitted to bond in a reasonable amount as fixed by the Court or that he be released to the custody of his parents or that he be sent to the Franklin County Detention Home and at that time a large number of witnesses including a minister, a Sunday School Superintendent, a school teacher, neighbors, and others testified that there was absolutely no risk in this boy being admitted to bond or released to his parents, that his parents are fine Christian people and the home of the parents is a fine Christian home, that the father was retired and could spend all of his time with his son and several witnesses testified they would welcome the boy in their home at any time and if for any reason the Court did not wish to send the boy to the parents home, they would gladly take him into their home. That the boy and his parents have never been involved in any trouble of any kind and were always peaceful and law abiding, regular

attendants at church and Sunday School and the Police Chief at the trial of this case said that the boy had never been involved in any trouble or words to that effect and the witnesses indicated and testified that they couldn't believe that he was involved in any way in the death of the decedent.

No evidence was offered by the State of Ohio to indicate that the boy should not be released on bond or to his parents, who are admittedly fine Christian people, but the Court did deny the Motion and did continue the defendant in said solitary confinement in an iron cell from the 5th day of August, 1966 to the said 12th day of September, 1966 when he was sent to the Diagnostic Center as hereinbefore set forth.

That there is no reason whatsoever why this defendant who has just reached 14 years of age, who has a good reputation, who is peaceful and law abiding and who would not constitute a risk in any way while this matter is pending on appeal, should be ordered confined until this matter is adjudicated by this Court.

Therefore, the defendant respectfully requests the Court that he be immediately ordered released to the custody of his parents pending the appeal or that he be admitted to bond in a reasonable amount to be fixed by this Court.

Jack Supman, Jordan C. Kistler,
Attorneys for Defendant, Buddy Lynn Whittington, a minor 14 years of age.

Copy mailed to E. Raymond Morehart, Prosecuting Attorney, Fairfield County, Ohio, this 14th day of September, 1966.

Jack Supman, Jordan C. Kistler,
Attorneys for Defendant, Buddy Lynn Whittington, a minor 14 years of age.

IN THE COURT OF APPEALS, FIFTH APPELLATE DISTRICT,
FAIRFIELD COUNTY, OHIO

Case No. 421

IN THE MATTER OF

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

MOTION

Now comes E. Raymond Morehart, Prosecuting Attorney of Fairfield County, Ohio, and moves the Court to dismiss the Appeal filed by the defendant-appellant, Buddy Lynn Whittington, for the reason that the order appealed from is not a final order and is therefore not subject to appeal, and that the Juvenile Court of this County still has jurisdiction of the above styled cause.

E. Raymond Morehart,
Prosecuting Attorney, Fairfield County, Ohio.

Copy mailed to attorneys for defendant this 19th day of September, 1966.

COURT OF APPEALS, FIFTH DISTRICT, FAIRFIELD COUNTY, OHIO

Case No. 421

Decided Sept. —, 1966.

IN THE MATTER OF

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

Judges: Hon. Leland Rutherford, P.J., Hon. D. Deane McLaughlin, Hon. Paul D. Van Nostran.

MEMO

APPEARANCES:

E. Raymond Morehart, attorney for Plaintiff-Appellee.

Jack Supman and Judson C. Kistler, attorneys for Defendant-Appellant.

By the Court:

The court coming on to hear the motion of the Prosecuting Attorney to dismiss the appeal filed by the defendant-appellant, for the reason that the order appealed from is not a final order, is overruled.

The court further considering the motions of the defendant-appellant, Buddy Lynn Whittington, (1) for suspension of execution of sentence pending the outcome of this appeal; (2) defendant-appellant's motion that defendant-appellant be released in the custody of his parents pending the appeal or be released on bond, are continued pending the return of the report from the Juvenile Diagnostic Center of Ohio to the Juvenile Court of Fairfield County. Entry to be submitted accordingly.

Paul D. Van Nostran, D. Deane McLaughlin,
Judges.

RUTHERFORD, P.J.

I concur in the overruling of the motion to dismiss the appeal, from the finding that Buddy Lynn Whittington is a delinquent child as set forth in the complaint, for want of a final appealable order. See Section 2501.02 Revised Code.

I would at this time overrule rather than continue the motions for stay and for release under bond for the reason that Buddy Lynn Whittington is at present being detained under an order which is only temporary and interlocutory in nature and is authorized under the provisions of Section 2151.26 Revised Code, as specified by the Juvenile Court.

Leland Rutherford, Judge.

IN THE COURT OF APPEALS, FIFTH APPELLATE DISTRICT,
FAIRFIELD COUNTY, OHIO

No. 421

IN THE MATTER OF

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

JUDGMENT ENTRY

This cause came on to be heard on the Motion of the Prosecuting Attorney to dismiss the appeal filed by the defendant-appellant, for the reason that the order appealed from was not a final order and was argued by counsel and submitted to the Court and the Court upon consideration thereof and for good cause shown did overrule said Motion, to all of which the Prosecuting Attorney, Attorney for Plaintiff-Appellee, excepts.

The matter came on further to be heard on the Motions of the defendant-appellant, Buddy Lynn Whittington, for suspension of execution of sentence pending the outcome of this appeal and defendant-appellant's Motion that defendant-appellant be released in the custody of his parents pending the appeal or be released on bond and the same was argued by counsel and submitted to the Court and the Court upon consideration thereof and for good cause shown did continue said Motions pending the return of the report from the Juvenile Diagnostic Center of Ohio, to all of which the defendant-appellant, excepts.

Paul D. Van Nostran, D. Deane McLaughlin, Judges.

Approved by:

E. Raymond Morehart, Attorney for Plaintiff-Appellee.

Jack Supman, Judson C. Kistler, Attorneys for Defendant-Appellant.

COURT OF APPEALS, FIFTH DISTRICT, FAIRFIELD COUNTY, OHIO

No. 421

IN THE MATTER OF

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

JOURNAL ENTRY

Upon application of Buddy Lynn Whittington by his counsel, it is ordered that further proceedings by the Juvenile Court of Fairfield County, upon the finding of Buddy Lynn Whittington to be a delinquent child, be stayed pending final determination by this Court of the appeal from said finding, conditioned upon Buddy Lynn Whittington giving an appeal bond conditioned according to law in the sum of $25.00, provided, however, that said stay and bond shall in no way stay any existing order as to custody of Buddy Lynn Whittington, or stay the right of the Juvenile Court of Fairfield County to determine or make orders regarding the temporary custody of said Buddy Lynn Whittington pending appeal.

It is further ordered that the appeal in this cause is assigned for hearing on the 29th day of November, 1966, at the Court House, Lancaster, Ohio, at 1:30 P.M.

Leland Rutherford, D. Deane McLaughlin, Paul D. Van Nostran, Judges.

IN THE COURT OF APPEALS, FIFTH APPELLATE DISTRICT,
FAIRFIELD COUNTY, OHIO

No. 421

IN THE MATTER OF
BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

JOURNAL ENTRY

This 22nd day of December, 1966, this cause came on to be heard upon Motion of the parents and counsel for Buddy Lynn Whittington, age 14, heretofore found by the Juvenile Court to be a delinquent child, for an order releasing said child to the custody of his parents, or that he be released on bond.

The testimony as given on hearing of a like Motion before Juvenile Court and contained in the Bill of Exceptions filed in this cause on appeal from the finding of delinquency was admitted in evidence for the purpose of this hearing and the Court upon agreement of counsel for all parties viewed the premises where Buddy has been confined by the Juvenile Court for a period of 78 days.

From our view, we find that Buddy is confined in a portion of the jail used for adults and that an adult is in fact now confined in an adjoining cell, in the same room.

Section 2151.34, Revised Code of Ohio, provides:

> "No child under eighteen years of age shall be placed in or committed to any prison, jail or lockup, nor shall such child be brought into any police station, vehicle or other place where such child can come in contact or communication with any adult convicted of crime or under arrest and charged with crime; provided that a child fourteen years of age or older may, for good cause shown, and with the consent of the juvenile judge or a person designated by him, be placed in a place of detention for adults, but in a room or ward separate from adults. All children under eighteen years of age when confined in such places of juvenile detention, shall not be detained for a period to exceed ninety days."

Under the conditions which we have found from our observation this day, it is our finding that Buddy Lynn Whittington is not placed in a place which meets the requirement fixed by Section 2151.34, Revised Code of Ohio.

This Motion for an order of this Court releasing Buddy to the custody of his parents or releasing him on bond is ordered overruled, for the reason that said matter of temporary custody is within the jurisdiction of the Juvenile Court. However, it is ordered that this cause is remanded to the Juvenile Court solely for the purpose of that Court making an order for the temporary custody of Buddy Lynn Whittington which is in compliance with the law.

Leland Rutherford, D. Deane McLaughlin, John C. Duffy, Judges. Judge John C. Duffy of the Tenth District, sitting in the Fifth District by designation.

IN THE COURT OF APPEALS, FIFTH DISTRICT,
FAIRFIELD COUNTY, OHIO

Case Number 421

Decided: —.

IN THE MATTER OF

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

Judges: Hon. Leland Rutherford, P.J., Hon. D. Deane McLaughlin, Hon. Paul D. Van Nostran.

MEMORANDUM:

APPEARANCES:

E. Raymond Morehart, Prosecuting Attorney, Fairfield County, Ohio.

S. Farrell Jackson, Assistant Prosecuting Attorney, Fairfield County, Ohio. For Appellee.

Jack Supman and Judson C. Kistler, 124½ West Main Street, Lancaster, Ohio, Attorneys for Appellant.

By the Court:

This is an appeal by Buddy Lynn Whittington from a judgment of the Juvenile Court finding him to be a delinquent child.

On August 5, 1966, a complaint was filed in the Juvenile Court of Fairfield County, Ohio, by Elwood R. Phillips, the pertinent part of which reads:

> "The undersigned says that he has knowledge of Buddy Lynn Whittington, a minor under the age of 18 years, to-wit, the age of 14 years; that said minor appears to be a delinquent child in this: that he did, on or about the 29th day of July, 1966, in the Village of Baltimore, County of Fairfield, State of Ohio, unlawfully, purposely and maliciously kill one Gladys Willard, contrary to Section 2901.05 of the Revised Code of Ohio."

Elwood R. Phillips was the Chief of Police of Baltimore, Ohio.

On August 5, when the complaint was filed, the Judge of the Juvenile Court ordered a warrant to issue to the Probation Officer for the arrest of Buddy Lynn Whittington

and ordering that when arrested he be brought before the Court. He was arrested and brought before the Court on the same day and has from the time of his arrest had representation of counsel.

Since August 5, Buddy has been held in detention by the Juvenile Court, during part of which time he has been at Juvenile Diagnostic Center.

On August 10, a motion was filed requesting that Buddy be released to his parents.

On August 11, a journal entry was filed as follows:

> "This 11th day of August, 1966, came E. Raymond Morehart, Prosecuting Attorney, also came Buddy Lynn Whittington along with his counsel, Jack Supman and Judson Kistler, to be arraigned upon a charge of delinquency. Also present were the parents of said child, Orville A. Whittington and Ollie Mae Whittington. The charge was distinctly read to Buddy Lynn Whittington and he was required to plead thereto.
>
> "Whereupon the said Buddy Lynn Whittington through his counsel entered a plea of 'not guilty' to said charge. It is therefore ordered by the Court that said case be set for hearing on the 24th day of August, 1966 at 9:30 o'clock a.m."

On August 24, hearing was held and testimony taken on the motion of Buddy to be released to his parents, placed on bond, or to be sent to the Franklin County Detention Home while this matter is pending. Said motion was overruled and said cause continued for further hearing on September 2, 1966.

At the hearing on September 2, 1966, in addition to the testimony then taken, it was stipulated that the testimony taken on the motion on August 25 be included and the Bill of Exceptions contains a complete transcript of all the proceedings.

Buddy's parents were normally at home, but on July 29 they left around 7:20 or 7:30 a.m. to visit a relative in Canton, Ohio. Buddy was up at the time, but was left at home alone that he might attend a summer school class in which he was enrolled at Liberty Union School. The class was scheduled at 8:30 a.m.

The Whittington's lived at 215 Fremont Street. The decedent, Mrs. Gladys Willard was a neighbor who lived with her husband, Herman Willard, across the street at 220 Fremont. A son, Jack Willard, also lived in the home with his parents. Jack had been separated from his wife for approximately nine months. They had previously lived two doors from his parents. The record does not disclose the whereabouts of Jack's wife or of his children with whom Buddy had played when Jack's family was together. Dick Willard, also a son of the decedent lived with his wife, Lula, and daughter, Susan, at 226 Fremont, next door to his parents. The decedent's mother, Mrs. Stella Brandon, and a sister, Genevieve Anderson lived at Route 1, Baltimore. Another sister, Aurilla Goodrich, resides in Florida, but in July was visiting at the Brandon home.

Herman, the decedent's husband, worked for Adam Poff, on a farm and left for work at about 6:00 a.m. on July 29.

Jack testified that his mother called him and prepared his breakfast at 6:20, that he left for work at approximately 6:50 and was at work at Defense Construction Supply Center, Columbus, Ohio at 7:45 a.m.

The daughter-in-law, Lula, testified that her husband, Dick, had gone to work at 6:45 a.m.

Elwood R. Phillips testified that he later talked to neighbors; that Mrs. Estep said she saw Mrs. Willard at approximately 6:30 a.m. on July 29 at the rear of her lot, presumably feeding her chickens, at which time she talked to her briefly; that Mrs. Barber stated she saw Mrs. Willard at 7:30 or a quarter of eight in her own yard drawing water from a hydrant presumably for her dog. There was no objection made to this hearsay testimony.

It was blackberry season and Gladys Willard was in the habit of going out mornings to pick blackberries in nearby areas. Her sister, Genevieve Anderson, also often went blackberry picking in the morning. On Friday mornings, it was the custom of Gladys Willard to drive to her sister Genevieve's at about 10:00 a.m. and they would go shopping at Lancaster.

The daughter-in-law, Lula Willard, who lived next door, testified that she went to Mrs. Willard's house at 8:40 a.m. to ask that she bring her girl a pair of pajamas, when she went shopping. No one answered the door, but her car was

there. At ten o'clock Lula tried again but no one answered at Mrs. Willard's home.

At 11:45 a.m. Genevieve called Lula to inquire and Lula sent her daughter to check. She found no one home, but the car was still there.

Shortly thereafter a search was commenced. Numerous people joined in the search, including Buddy Lynn Whittington, neighbors and relatives. Later in the afternoon they were joined by law enforcement officials. Primarily the search covered areas where there were blackberries.

Later in the afternoon, Buddy went to play ball. His parents returned home at approximately 7:30 p.m.

As to what happened at this time, Mr. Whittington testified:

> "Well, I went and looked for the key, and the key wasn't there, or at least I didn't find it. And somebody said Buddy was at ball practice, which I would have known if I had given it a second thought. And I don't know who said it, but I went to the school house after him. And he had ridden his bicycle up there, and I asked him about the key, if he had it in his pocket, and he said, 'No.' So he got on his bicycle and went home; and we unlocked and went in the house.
>
> Q. Where was the key? Was it in a different place from where you always keep it?
>
> A. It was . . . there's a pipe hanger up there where we always put the key. I mean, in this space across there, and there's a little space about four inches, and he stuck it in there between the pipe hanger, which we always keep it over on the other side, or most of the time, and that's where I missed it. I just didn't look in that space."

After testifying that he had taken some things into the house, Mr. Whitting further testified:

> "Q. What did you do after you went back outside?
>
> A. I run into Mrs. Mauger out there, and she said 'I searched my house everyplace.' She said, 'I went in and looked through my wardrobes, the closets in her house.' I said, 'Well, I'll go check the garage. You know our garage is right there back of the house.

Q. Is the garage kept locked?
A. No.
Q. I see.
A. Of course, I went in there and looked, and I went from there in the house. I looked and went back out.
Q. Then what did you do, sir?
A. I fooled around outside awhile, and I got to thinking there could only be one place that I missed looking. So I went back and started looking under the beds.
Q. Did anybody go with you?
A. Yes, Buddy went along.
Q. Buddy went with you?
A. Yes.
Q. How many bedrooms do you have, Mr. Whittington?
A. Three.
Q. Three bedrooms, and where are they in relation to your house?
A. They're on the north side. They're in rotation. We sleep in the one to the west, and Buddy in the middle one, and the other . . .
Q. Now, how did you check under the beds, will you tell us just what you did? Which bedroom did you start with?
A. I started with our bed.
Q. With your bedroom?
A. In the beginning, I never expected to find Mrs. Willard in the home like that. Mr. Morehart: Well, I have no doubt about that, sir.
A. The reason I thought of it, was because her and her husband had trouble, and Jack's there; and him and his wife have a lot of trouble. And I thought it was more than she could take, and I figured she would rather die in our house than in her own home.
Q. I see. That was what you maybe were thinking, why you would look, make such a thorough search of your house?
A. Yes.
Q. Now when you went . . . was Buddy with you when you checked the bedrooms?
A. Yes.
Q. Or did he check certain bedrooms and you check certain bedrooms?

A. No. He just went down there and looked in; and I looked under one and he went to the next one. And he went on over and walked up there to the end of the vanity, and he just stopped there.
Q. He walked up to the end of the vanity and stopped?
A. He was looking at some model cars he's got there. He's got the whole top of it covered.
Q. Did he help you look under your bedroom, under your bed?
A. No. He didn't look. He just walked through. He goes with me every place I go.
Q. I see, and he was with you when you looked under the bed in your bedroom?
A. Yes.
Q. And you found nothing there?
A. No.
Q. You came out then to his bedroom then, which would be the next bedroom, and you say he walked up to the vanity and stops and starts looking at some little cars?
A. Yes.
Q. Now where did you look under his bed at? Where were you when you looked under his bed?
A. Just about middle-ways.
Q. On which side?
A. It would have been on the south side.
Q. On the south side; that's as you come into the bedroom, is it not?
A. Yes.
Q. Did you get down on your hands and knees?
A. Yes, I got down on my hands and knees and pulled the spread up and . . .
Q. Were you able to see her at that time?
A. Yes, sir.
Q. What did you say?
A. I just don't remember.
Q. What did you do then, right then?
A. I got up and went outside and called my wife, told her.
Q. Did you say anything to Buddy?
A. Yes, I said to him, I said something like, 'Here she is under your bed'.
Q. What did he say?

A. I just can't recall exactly what he said. He says, 'Oh, no' or 'can't be' or something similar to that. And he knelt down and looked."

The bedrooms were all on the first floor. The parents bedroom was to the left as one would come in the back door and Buddy's bedroom was next to it. Everything in the house appeared to be in order at the time Mr. Whittington searched the house.

The Sheriff and Coroner were called. There was a general inquiry of those present as to what had happened. Chief of Police Elwood R. Phillips testified that he and Mr. Berry from the Sheriff's Department talked to the family some and asked Buddy if he had been around home all day, and he stated, "Yes". An objection to statements of Buddy was overruled and it was stipulated that continuing objections could be had to testimony as to anything said by Buddy. Mr. Phillips then testified as follows:

"A. I asked Buddy if he were there all morning and he said, 'Yes'. And I asked him if he was alone and he said, 'Yes'. I asked him if he had seen Mrs. Willard, and Buddy stated, 'Yes, she had come to the door about eight o'clock, returned the curlers and left', but he did not know where she went.

Q. By the way, did you see these curlers?

A. Yes, I saw the curlers.

Q. Where were they at the time you saw them?

A. They were in the kitchen. . . . . .

Q. Did you have any further conversation with Buddy at that time?

A. Yes, I asked Buddy if he were there all day, and he said he'd been out part of the day hunting Mrs. Willard; and, in fact, he said all day, about all day he had been hunting Mrs. Willard. And I made the statement that we were not called—she was not officially reported missing until three o'clock. Buddy stated that he was out long before then and mentioned 11:30.

Q. You mean, mentioned 11:30?

A. Mentioned that he had been hunting her.

Q. Since 11:30?

A. Since about 11:30.

Q. All right.
A. At the time, I believe Mrs. Whittington stated she couldn't understand. Buddy had been—had never been left alone more than an hour at a time until that particular day. Of course, she told us that Buddy was supposed to have gone to school that morning, and that he didn't go to school, he stated, because he was sick. And he helped hunt then and he helped me in the afternoon, I'd say approximately four o'clock when he ran into the boys."
No objection was made to the statements of Mrs. Whittington.

"Q. Did Buddy say what he did after they (his parents) left?
A. Why, Buddy stated he went in and lay down after they left and turned on his record player.
Q. And he told you he did not go to school because he was ill?
A. Because he was ill."

Mr. Phillips further testified that he checked out the alibis of Herman Willard, Jack Willard and Dick Willard and all were at work. No objection was made to this testimony. Herman Willard at one point testified he was back home at 8:00 a.m. but later said this testimony was in error, that he sometimes returned home but had done so on the 29th.

Three garbagemen had picked up garbage along the street at about 7:00 a.m.

The decedent's dog was found along the railroad with his rope chewed.

Mr. William Rutherford, Probation Officer for the Juvenile Court testified that on the evening of July 29 he had conversations with Mr. and Mrs. Whittington and Buddy at the Whittington home, a part of which were as follows:

"In talking with Budy he told me got up that morning and dressed, and was going to go to school; but that after his parents left, he felt ill and didn't go to school....

He said he had a stomach ache.

I asked him if he'd seen Mrs. Willard that day, and he told me that he had. That sometime about eight o'clock, she came to the door to return some curlers that his mother had loaned her, or used in fixing Mrs. Willard's hair. . . . Said she came to the rear door . . . he got up and went to the door. She handed him the curlers and he laid them there on the chair, I believe, or on the table. . . . And she turned and walked away. He said he didn't know which way she went, that he went back and lay down on the bed. . . . I asked Buddy if he had any idea of how Mrs. Willard's body got under the bed and he said he didn't know anything about it. I asked him if he had seen anybody else around the neighborhood that day, if there had been anybody come to the door, if there was anybody in the house; he said he hadn't seen anybody.

I asked him if he'd left the house in the morning, and he said he'd left sometime close to noon. He didn't know exactly what time it was. He thought it was sometime right after eleven o'clock but he wasn't sure. He said he left after a lady came who was a sister of Mrs. Willard and told him that Mrs. Willard was missing. Then, I think he said he changed his clothes and went to the berry patch to look for Mrs. Willard."

Orville A. Whittington, the father, testified:

"Q. Do you know on the day in question, the 29th of July, if Buddy left the house that morning?

A. Only what he said.

Q. And what did he say with reference to that?

A. He said he was over at Kerns', that's over on the other corner. That would be three lots down. He goes back in the alley and goes up. It's the second house, would be the third one, there's an empty lot right there. It's the second house up to the corner.

Q. When did he tell you left the house that morning, does he know? Do you know?

A. No. He didn't state no specific time he left, but he was there; and he was back in the back yard with his B-B gun, he said, at the berry patch.

Q. Now with reference to the Kerns' property and in

that berry patch, could the back door of your house be seen from either of these two locations?

A. No.

Q. What are the obstructions?

A. The garage sets there, and there's a pine tree at the corner of the garage. And that's all you can see just up the side and straight to the back.

Q. So that there would be a period of time then when the back door would not be in view of Buddy during that morning according to what he told you?

A. Yes, sir."

Buddy Lynn Whittington did not testify.

There was testimony that the mattress and springs had been removed and the body placed rather than shoved under the bed. Pictures were taken before the body was moved and are in evidence. Decedent's glasses, hair net, shoes, and lower dentures were beside the body under the bed.

Based upon medical examination and autopsy, the medical testimony was that Mrs. Willard's death was homicide by manual strangulation with a soft object, probably by hands or an arm placed around her neck from behind. Her dress was pulled up but medical examination showed no evidence of sexual attack. The doctor who examined the body at about 8:45 p.m. gave his opinion that death had occurred approximately twelve hours earlier, but eleven hours or over, during which time she had been in the same position under the bed as when the body was found. There were some broken ribs.

There was an abundance of evidence as to Buddy Lynn Whittington's good character and reputation prior to July 29. He was regular in attendance at school, church, Sunday school and youth groups. He had been obedient at home and at school and subjected himself to the reasonable control of both his parents and teachers. Except for a finding that he was delinquent for having unlawfully killed Mrs. Willard, there is no other evidence upon which to base a finding of juvenile delinquency.

While one must read the entire Bill of Exceptions to gain the complete story, we have tried to set forth the pertinent parts much more in detail than usual, in order to include

an accurate portrayal of the factual situation as a part of this opinion.

At the close of the hearing held on September 2 to determine whether or not Buddy Lynn Whittington is a delinquent child as alleged, the Juvenile Judge, as shown by the Bill of Exceptions, after overruling a motion to dismiss the complaint, said:

> The Court finds that there has been a crime committed here, that there has been a homicide committed on this alleged victim; and the Court finds that there is probable cause to believe that this young defendant may have done this act, which, if done by an adult, would be a felony. And, at this time, it is the order of the Court that the boy be examined, physical and mental examination be made of such child, by the Bureau of Juvenile Research, called the Diagnostic Center of the Youth Commission."

Thereafter in accordance with further verbal instructions from the Judge, the following journal entry was signed and recorded:

> "On the 2nd day of September, 1966, appeared E. Raymond Morehart and S. Farrell Jackson, Prosecuting Attorneys on behalf of the State of Ohio; also appeared Buddy Lynn Whittington, an alleged delinquent child, with his parents, O. A. Whittington and Ollie Whittington, father and mother, and his attorneys, Judson C. Kistler and Jack Supman.
>
> "The said Buddy Lynn Whittington, a minor child of the age of 14 years, being brought before the Court, this cause came on to be heard on the complaint, and it appearing that all citations and warrants have been served and that all persons interested are now before the Court, and the Court having heard all of the evidence and being advised in said premises, finds that said Buddy Lynn Whittington is a minor under the age of eighteen, fourteen years of age, and is a delinquent child as set forth in the complaint, and that said Buddy Lynn Whittington has committed an act which would be a felony if committed by an adult.

"It is therefore ordered by the Court, pursuant to Section 2151.26 of the Revised Code of the State of Ohio, that William Rutherford, the Juvenile Probation Officer, make a full investigation herein and report the same to this Court. It is further ordered that said Buddy Lynn Whittington, a delinquent child, be committed to the Juvenile Diagnostic Center of the Ohio Youth Commission for a complete mental and physical examination, the results of which are to be forwarded to this Court. And this cause is continued pending investigation and the findings of the mental and physical examination. Exceptions saved to defendant."

Buddy's counsel did not approve the entry. Within twenty days, notice of appeal to this Court was filed from said judgment and particularly from the finding therein that Buddy is a delinquent child as set forth in the complaint. The appeal is on questions of law.

Section 2501.02, Revised Code, provides that the Court of Appeals has jurisdiction:

"Upon an appeal upon questions of law to review, affirm, modify, reverse or set aside or reverse judgments or final orders of courts of record inferior to the Court of Appeals within the district, *including the finding, order or judgment of a juvenile court that a child is delinquent, neglected or dependent,* for prejudicial error committed by such lower court." (underscoring added).

Section 2151.02, Revised Code, provides:

"As used in Sections 2151.01 to 2151.54, inclusive, of the Revised Code, 'delinquent child', includes any child

(A) Who violates any law of this state, ..."

Section 2151.26, Revised Code, provides:

"In any case involving a delinquent child under Sections 2151.01 to 2151.54 inclusive, of the Revised Code, who has committed an act which could be a felony if committed by an adult, the juvenile judge, after full investigation and after mental and physical examination of such child has been made by the Bureau of

Juvenile Research, or by some other public or private agency, or by a person qualified to make such examination, may order that such child enter into a recognizance with good and sufficient surety, subject to approval of the judge, for his appearance before the Court of Common Pleas at the next term thereof, for such disposition as the Court of Common Pleas is authorized to make for a like act committed by an adult; or the judge may exercise the other powers conferred in such sections in disposing of such case."

If said minor were to be bound over to the Common Pleas Court under the foregoing section, he would immediately become entitled to all the protections afforded an adult. He would at the same time lose the protection afforded a juvenile under the Juvenile Code and if indicted by a grand jury for unlawfully, purposely and maliciously killing another, contrary to Section 2901.05 of the Revised Code of Ohio and found guilty beyond a reasonable doubt he would, likewise as an adult, be subjected to a sentence of imprisonment for life.

On the other hand, when the jurisdiction of the Juvenile Court is not relinquished and a child is not charged, tried, convicted or imprisoned for the crime of unlawfully, purposely and maliciously killing another contrary to the criminal statutes of Ohio but is retained before the Juvenile Court to determine whether by his act or acts he has become a delinquent child, the purpose is not to punish him for crime but to determine whether he is a delinquent child and, if so, the extent to which the State is warranted in making provisions for his custody, and his welfare, in which case, under the provisions of Section 2151.38, Revised Code, the orders are temporary and continue only until terminated or modified, or until a child attains the age of 21 years. See Sections 2151.35 and 2151.38, Revised Code.

The value of the rights afforded a child by a Juvenile Code has been recognized by the Supreme Court of the United States as recently as March 21, 1966. See Kent vs. United States, 86 S. Ct. 1045.

"Syllabus 10.

District of Columbia Juvenile Court act permitting waiver of juvenile courts jurisdiction over child did

not authorize court, in total disregard of motion for hearing filed by counsel and without any hearing or statement or reasons, to decide that a 16-year-old minor should be taken from the receiving home for children and transferred to jail along with housebreaking, robbery and rape, be exposed to the possibility of a death sentence instead of treatment for a maximum in the particular case of five years, until he was 21.

"Syllabus 15.

The District of Columbia Juvenile Court's waiver of jurisdiction over 16-year-old defendant charged with housebreaking, robbery and rape was a critically important action determining vitally important statutory rights of juvenile."

Running through all of the cases, we find the common complaint of one who is treated as a juvenile that he is being deprived of the constitutional rights of an adult charged with crime and vice versa of the child as to whom jurisdiction of the juvenile court has been relinquished complaining that he has been deprived of his valuable statutory rights under the Juvenile Code.

In Cope v. Campbell, 175 O. S., 475, the Supreme Court of Ohio held that proceedings in the Juvenile Court are civil in nature and not criminal; that Section 2151.35, Revised Code, which provides for disposition of juvenile cases, implies protection for the minor and not punishment. Further that Section 10, Article I of the Ohio Constitution, and the Fifth and Sixth Amendments to the United States Constitution, being applicable only to the rights of accused persons charged with criminal offenses, do not apply.

In the opinion, at page 477, the Court said:

"The hearing in the Juvenile Court is upon the status of a minor child, in the nature of guardianship, and this is so even though the minor child is over 16 years of age and commits an act which, if committed by an adult, would constitute a felony. The legislature by this act clearly is not inclined to brand the appellant with a mark of infamy or to set a mark of disgrace upon him. It is for the purpose of correction and rehabilitation and not for punishment."

In the opinion, the Supreme Court further stated that there had been no violation of the Fourteenth Amendment of the United States Constitution. Also see, Ex parte Januszewski, 196 Fed., 123, decided by the U.S. Circuit Court, S.D., Ohio, and Pee v. United States, 274 Fed. 2nd, 556. Further see Prescott v. State, 19 O. S., 184, in which a minor 14 years of age burned a barn but was neither indicted or tried by a jury the Supreme Court of Ohio in the opinion said:

> "The provisions referred to in our state constitution relate to the preservation of the right of trial by jury, and to the rights of accused in criminal prosecutions. We do not regard this case as coming within the operation of either of those provisions. It is neither a criminal prosecution, nor a proceeding according to the court of the common law, in which the right of trial by jury is guaranteed.
>
> "The proceeding is purely statutory; and the commitment in cases like the present, is not designed as a punishment for crime, but to place minors of the description and for the causes specified in the statute, under the guardianship of the public authorities named, for proper care and discipline, until they are reformed, or arrive at the age of majority."

Likewise in the case of Wissenburg v. Bradley, Judge, 209 Iowa, 813, 67 A.L.R., 1075, appears the following comment:

> "The appellant is not being tried in this proceeding for any crime. The action is in a sense, a special proceeding provided by statute, wherein the state, by virtue of its authority as *parens patriae,* takes jurisdiction of the incorrigible child, and commits it, not to jail for punishment, but to a reformatory for its care, education and training. That such a statute and such a proceeding, without a trial by jury, does not violate either the federal or the state constitutional provisions, has been repeatedly held."

It has been argued that although this 14-year-old boy has not been charged with criminal responsibility under

the criminal statutes of Ohio, the finding that he is a delinquent as defined by the Juvenile Code is dependent upon a finding that he has violated the specific law of this State alleged in the complaint, which if violated by an adult would be a crime and therefore, that the burden of proof must be beyond a reasonable doubt. The answer is that he is not charged with the crime or with the consequences imposed upon one who is so charged and found guilty. If under the Juvenile Code, a child be determined to be dependent, neglected or delinquent, the Juvenile Court may place such child on probation or assume custody for the best welfare of the child in the manner provided. The further argument is then made that without trial for the specific crime upon which the finding of delinquency is dependent, the juvenile is left with the stigma of guilt in the eyes of the public for a crime which he may or may not have committed. The answer to this is one of educating the public to the end that such a misconception is removed. The public must understand that a child found to be a delinquent for having violated a law of this State has not been tried as a criminal under the criminal statutes and therefore must not be considered as having committed a crime. He has not been afforded the right of jury trial or other rights which one charged with crime would receive. Neither has he been found guilty beyond a reasonable doubt. He has only been found to be a delinquent under proceedings as authorized by the Juvenile Code by which he is afforded valuable rights not provided for an adult.

The proceeding being civil in nature and not criminal, a preponderance of the evidence is sufficient to warrant a determination that a minor is a delinquent, even though such determination involves a finding that a criminal statute has been violated by such minor. See State v. Shardell, 107 O. A., 338.

If some day a juvenile alleged to be a delinquent when the allegation of delinquency is dependent upon violation of law becomes afforded the same constitutional rights as an adult, it is likely that he will at the same time lose valuable rights now afforded him as a child as is the case when under Section 2151.26, Revised Code, supra, the Juvenile Court relinquishes jurisdiction and places a juvenile under recognizance to appear before the Common Pleas Court.

At present, a 14-year-old juvenile found to be delinquent for having violated a law of this State is subjected to no loss of liberty other than that to which a juvenile found delinquent for any other cause may be subjected, therefore his rights as a delinquent cannot be distinguished on this basis from those of any other delinquent.

Among the authorities which we have cited, the case of Cope v. Campbell, supra, is stare decisis, as to many of the issues herein.

The evidence contained in the record fails to disclose any thorough investigation by officials toward eliminating the possibility that Mrs. Gladys Willard may have been killed by some other person.

Buddy Lynn Whittington having been tried by the Juvenile Court as an alleged delinquent and not under the criminal statutes, and the burden of proof being by a preponderance of the evidence, we do not find the judgment of the Juvenile Court finding Buddy to be a delinquent child to be either against the manifest weight of the evidence or contrary to law. We find no violation of his constitutional rights and no error prejudicial to him. Neither do we find the Juvenile Code to be unconstitutional. Each of the assigned errors is overruled and the judgment is affirmed, with this cause to be remanded to the Juvenile Court for further proceedings according to law. The motion of the American Civil Liberties Union, filed after the time for filing briefs as fixed by rule of court and after hearing, to be permitted to file a brief amicus curae is overruled.

Journal entry to be submitted.

Judgment affirmed and cause remanded for further proceedings according to law.

Leland Rutherford, D. Deane McLaughlin, Paul D. Van Nostran, Judges.

IN THE COURT OF APPEALS, FAIRFIELD COUNTY, OHIO, FIFTH APPELLATE DISTRICT

Case No. 421

IN THE MATTER OF

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

ENTRY

This cause came on for hearing on the appeal of Buddy Lynn Whittington, from a judgment of the Juvenile Court of Fairfield County, Ohio, finding him to be a delinquent child.

The Court, on consideration of the briefs filed herein, the oral argument of counsel and on due consideration thereof, finds that the finding of the Juvenile Court that Buddy Lynn Whittington was a delinquent child is not against the manifest weight of the evidence or contrary to law. That there was no violation of his constitutional rights and no error prejudicial to him and we do not find the Juvenile Code to be unconstitutional, and we further find that the judgment of the Juvenile Court should be, and the same hereby is, affirmed and this cause is remanded to the Juvenile Court of Fairfield County, Ohio, for further proceedings according to law.

Further the Court, upon consideration thereof, does overrule the Motion of the American Civil Liberties Union for leave to file a brief amicus curiae.

The appellant to pay the costs of this proceeding.

Exceptions saved to the defendant appellant, and to the American Civil Liberties Union.

Leland Rutherford, D. Deane McLaughlin, Paul D. Van Nostran, Judges.

Approved:

E. Raymond Morehart, Prosecuting Attorney.

Jack Supman, Judson C. Kistler, H. J. Johnson, Attorneys for Appellant.

IN THE COURT OF APPEALS, FIFTH DISTRICT, FAIRFIELD COUNTY, OHIO.

No. 421

IN THE MATTER OF

BUDDY LYNN WHITTINGTON, AN ALLEGED DELINQUENT CHILD

NOTICE OF APPEAL

The Defendant-Appellant, Buddy Lynn Whittington, hereby gives Notice of Appeal on questions of law to the Supreme Court of Ohio from the judgment and final order of the Court of Appeals filed herein on the 16th day of January, 1967, affirming the judgment of the Juvenile Court of Fairfield County, Ohio and remanding the cause to the Juvenile Court of Fairfield County, Ohio.

Said appeal is on questions of law, is a case involving a constitutional question, is a case of public and great general interest and is on condition that a Motion to Certify be allowed by the Supreme Court of Ohio.

Jack Supman, Judson C. Kistler, H. J. Johnson,
Attorneys for Defendant-Appellant.

Copy delivered to E. Raymond Morehart, Prosecuting Attorney, this 16th day of January, 1967.

Jack Supman, Judson C. Kistler, H. J. Johnson,
Attorneys for Defendant-Appellant.

IN THE SUPREME COURT OF OHIO

Journal 48, Page 141

APPEAL FROM THE COURT OF APPEALS FOR FAIRFIELD COUNTY

This cause, here on appeal as of right from the Court of Appeals for Fairfield County, was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

It is further ordered that the appellee recover from the appellant its costs herein expended; that a mandate be sent to the Juvenile Court to carry this judgment into execution; and that a copy of this entry be certified to the Clerk of the Court of Appeals for Fairfield County for entry.

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MOTION FOR AN ORDER DIRECTING THE COURT OF APPEALS FOR FAIRFIELD COUNTY TO CERTIFY ITS RECORD

It is ordered by the Court that this motion is overruled.

* * * * *

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1967

No. 36 Misc.

In the Matter of

BUDDY LYNN WHITTINGTON, Petitioner.

On petition for writ of Certiorari to the Court of Appeals of the State of Ohio, Fairfield County.

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 701.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

October 9, 1967.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1967 285-982/818